Mobile Home Estates, Inc. *and* International Union, Allied Industrial Workers, AFL-CIO, and its Local 712. Case 8-CA-10691

February 4, 1982

DECISION AND ORDER

MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 16, 1981, Administrative Law Judge John M. Dyer issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed cross-exceptions and briefs in support thereof and in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

1. The General Counsel excepts to the Administrative Law Judge's failure to find that Respondent additionally violated Section 8(a)(1) of the Act when, on November 13, 1976, Respondent's president, Newman, interrogated employee Phyllis Hicks regarding her willingness to cross the picket line in the event of a strike, and in the same conversation told Hicks that if they did not have the Union he could afford to pay some of them better wages. We find merit in this exception.

The Administrative Law Judge correctly stated that the standard to be applied in determining the lawfulness of Newman's conduct is that applied in *Mosher Steel Company*, 220 NLRB 336 (1975). Thus, questions about employee strike intentions which are not accompanied by threats, promises, or other coercive conduct are not *per se* unlawful, but must be judged in light of all of the relevant circumstances. We find that Newman's questioning of Hicks, occurring in the context of his statement that if they did not have the Union he could afford to pay some employees better wages, exceeded the bounds set forth in *Mosher Steel*, and that Respondent, by Newman's conduct, violated Section 8(a)(1) of the Act. We shall amend the Administrative Law Judge's Conclusions of Law and recommended Order accordingly.

2. We also find merit in the General Counsel's exception to the Administrative Law Judge's failure to find that Respondent violated Section 8(a)(3) and (1) of the Act when, following the strike, it denied reinstatement to probationary employees Dale Thomas and John Carpenter.

It is well established that an economic striker who has not been permanently replaced is entitled to reinstatement upon making an unconditional offer to return to work, absent a showing by the employer that its refusal to offer reinstatement was based on legitimate and substantial business justifications.[3] Further, the denial of reinstatement to an economic striker, absent legitimate business reasons, is so inherently destructive of employee rights that evidence of specific antiunion motivation is not needed.[4] We find that Respondent has not met its burden here. Thus, there is no evidence that

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. Administrative Law Judge Ivar H. Peterson conducted the hearing in the instant case in May 1977. Following the issuance of his Decision, the Board remanded the case for additional findings. Before issuing a Supplemental Decision, however, Administrative Law Judge Peterson retired. After obtaining statements of position from the parties, the Board issued an order remanding the case for a hearing *de novo* by a new administrative law judge. Subsequently, however, the Board approved a stipulation entered into by the parties that the case be decided by a new administrative law judge based on his own review of the original record and his own findings of fact and credibility resolutions independent from the Decision previously issued by Administrative Law Judge Peterson. Thereafter, Administrative Law Judge John M. Dyer was assigned to issue a decision. It is the Board's established policy to attach great weight to an administrative law judge's credibility findings insofar as they are based on demeanor. However, in contested cases the Act commits to the Board itself the power and responsibility of determining the facts as revealed by a preponderance of the evidence, and the Board is not bound by the administrative law judge's findings of fact, but bases its findings upon a *de novo* review of the entire record. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). Administrative Law Judge Dyer's credibility findings are based on factors other than demeanor, and in consonance with the Board's policy set forth in *Standard Dry Wall Products, Inc., supra*, we have independently examined the record in this case. We find that there is no basis on the record in this proceeding for reversing his credibility determinations or his findings of fact based thereon.

[2] Employee Hicks testified to a conversation on November 15 or 16, 1976, with Director of Marketing Miller, in which the latter allegedly asked her whether she intended to cross the picket line in the event of a strike. Miller denied having any conversation with Hicks. The Administrative Law Judge, assuming *arguendo*, without deciding, the truthfulness of Hicks' testimony, found that no violation had been established. We find it unnecessary to reach this issue since the finding of such an additional violation would be cumulative and would not materially affect our Order.

We adopt the Administrative Law Judge's conclusion that Miller did not threaten employee Mihuc in violation of Sec. 8(a)(1) of the Act by stating that Respondent was going to close the plant during the winter and that Miller and Respondent's president, Newman, were going to go to Florida. In so doing, however, we disavow the Administrative Law Judge's finding that Miller's words were not meant seriously. Rather, we find, in agreement with the Administrative Law Judge, that in the context in which it was made the statement did not constitute a threat.

In view of the Administrative Law Judge's conclusion, which we adopt, that employee Holibaugh was not discharged in violation of Sec. 8(a)(3) of the Act, we find it unnecessary to pass on the Administrative Law Judge's statement that, even had the discharge been unlawful, the strike would not have been an unfair labor practice strike.

[3] *N.L.R.B.* v. *Fleetwood Trailer Co.*, 389 U.S. 375 (1967); *The Laidlaw Corporation*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970).

[4] *The Laidlaw Corporation, supra*, and cases cited therein at 1369.

either Thomas or Carpenter was ever warned or otherwise advised prior to the strike that his work was unsatisfactory. Indeed, the only evidence regarding Respondent's decision not to offer them reinstatement is Supervisor Lascelles' self-serving testimony that *after the strike* he asked Thomas' and Carpenter's foremen about their work and was told that it had been poor. It is therefore clear that Respondent has not demonstrated that Thomas and Carpenter in any event would have been discharged prior to the unconditional offer to return,[5] or that its refusal to offer them reinstatement was otherwise justified by substantial and legitimate business reasons. Accordingly, we find that, by its conduct, Respondent violated Section 8(a)(3) and (1) of the Act.

AMENDED CONCLUSIONS OF LAW

Insert the following as new Conclusions of Law 7(d) and 8 and renumber the subsequent paragraph accordingly:

"(d) Coercively interrogating employee Phyllis Hicks regarding her willingness to cross the picket line in the event of a strike.

"8. By discriminatorily failing and refusing to reinstate economic strikers John Carpenter and Dale Thomas upon their unconditional offer to return to work, Respondent has violated Section 8(a)(3) and (1) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Mobile Home Estates, Inc., Bryan, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as new paragraphs 1(f) and (g) and reletter the subsequent paragraph accordingly:

"(f) Coercively interrogating employees regarding their willingness to cross a picket line in the event of a strike and informing employees that, if they did not have the Union, Respondent could afford to pay some of them better wages.

"(g) Discriminatorily refusing to reinstate, upon their unconditional offer to return to work, employees who participate in an economic strike."

2. Insert the following as a new paragraph 2(c) and reletter the subsequent paragraphs accordingly:[6]

"(c) Offer John Carpenter and Dale Thomas immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings suffered by reason of the discrimination against them, with interest, to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977). (See *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)"

3. Substitute the attached notice for that of the Administrative Law Judge.

[5] *Markle Manufacturing Company*, 239 NLRB 1142, 1149 (1979).

[6] Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT do anything that restrains or coerces employees with respect to these rights.

WE WILL NOT refuse to recognize, meet, or bargain with International Union, Allied Industrial Workers, AFL-CIO, and its Local 712, as the exclusive bargaining representative of our employees in the following unit:

All production and maintenance employees at Respondent's Bryan, Ohio, place of business, but excluding plant clerical employees, office clerical employees, road service em-

ployees, truck drivers, and guards and supervisors as defined in the Act.

WE WILL NOT tell employees that their Union is no good and costs them money and they should resign from it and form their own union.

WE WILL NOT urge employees not to engage in a strike and not to support their Union.

WE WILL NOT coercively interrogate employees regarding their willingness to cross a picket line in the event of a strike.

WE WILL NOT discriminatorily fail or refuse to reinstate, upon their unconditional offer to return to work, employees who participated in an economic strike.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described above, and, if any understanding is reached, embody such understanding in a signed agreement.

WE WILL provide the Union with the information it requested in its December 10, 1976, letter and with any similar information it may request.

WE WILL offer our employees John Carpenter and Dale Thomas immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without loss of seniority or other rights and privileges, and WE WILL make each of them whole for any loss of earnings they may have suffered by reason of our discrimination against them, with interest.

MOBILE HOME ESTATES, INC.

DECISION

STATEMENT OF THE CASE

JOHN M. DYER, Administrative Law Judge: Following the issuance of an Order by the National Labor Relations Board, herein referred to as the Board, remanding this case to the Administrative Law Judge who originally heard the proceeding and his becoming unavailable, the parties hereto, Mobile Home Estates, Inc., herein referred to as the Company or Respondent, International Union, Allied Industrial Workers, AFL-CIO and its Local 712, herein referred to as the International and the Local and collectively as the Union, and the counsel for the General Counsel, herein referred to as the General Counsel, expressed their desires on how to proceed to the Board, and it issued an Order remanding the proceeding to the Regional Director for a hearing *de novo*. Following the issuance of a notice of hearing by the Acting Regional Director on July 2, 1980, the parties stipulated that this case could be referred to an administrative law judge for issuance of an original and independent decision based on that administrative law judge's own analysis, review, findings, and conclusions in this matter, and not adopting or relying on the findings and conclusions in the Decision of the prior administrative law judge. Following an agreed motion and stipulation, to the Board, it issued an order on September 18, 1980, granting the motion, approving the parties' stipulation, and ordering the chief administrative law judge to designate an administrative law judge for the purpose of issuing and serving upon the parties a written decision on the record containing findings of fact, specific resolutions on the credibility of the testimony of witnesses, conclusions of law, and recommendations. The Chief Administrative Law Judge appointed me and I, with the agreement of the parties, set a date for receipt of their briefs in this matter. Briefs received from Respondent and the General Counsel have been studied and considered, together with the record and exhibits.

The complaint, as amended, sets forth the jurisdiction and commerce allegations and the status of the Union, all of which are admitted. Respondent admitted the supervisory status of Company President James Newman, Director of Marketing Steve Miller, Plant Manager Clarence Brannun, and Plant Superintendent Lascelles. Respondent admitted that it had recognized the International as the bargaining representative of a production and maintenance unit at Respondent's Bryan, Ohio, place of business in March 1972 and signed a 3-year contract with the Union which was in effect from November 13, 1973, through November 14, 1976. Respondent denied that the Union represented a majority of its unit employees until the date of its answer, but admitted that the Union had requested negotiation and collective bargaining with it up through December 10, 1976.[1] It admitted that certain employees struck Respondent from November 20 until December 1 and that the Union notified Respondent the strike was terminated as of December 1, and made an unconditional offer to return to work on behalf of the employees engaged in the strike. Respondent admitted it terminated Harry Holibaugh on November 18 and had not reinstated him, and that the Union on December 10 had requested of it the names and addresses of all bargaining unit employees and it had not honored that request.

Complaint paragraphs 12 through 37, as amended, contain allegations that Respondent violated Section 8(a)(1) of the Act by various interrogations, refusals to consider the Union's wage demands and threats to close the plant, conducting direct negotiations with employees, suggesting the formation of a separate union, and seeking resignations from the Union. Many of these paragraphs are nearly identical in language with the exception of a date. Unfortunately, the General Counsel's brief does not des-

[1] Unless otherwise specified, all dates herein refer to the fall and winter of 1976 and the first few months of 1977.

ignate which testimony he contends supports the individual paragraph allegations, and I have made assumptions that certain testimony was meant to substantiate certain items in the complaint.

The complaint also alleges that Respondent violated Section 8(a)(5) by unilaterally instituting pay raises and increasing the existing piece rate and bonus without notifying and bargaining with the Union, and that Respondent engaged in a course of bad-faith bargaining. It is further alleged that the strike was an unfair labor practice strike and that Respondent did not reinstate 12 named individuals at the conclusion of the strike and laid off or terminated some of them because they had engaged in a protected strike, in violation of Section 8(3) and (1) of the Act. A separate refusal to bargain is alleged in regard to Respondent's refusal to provide the information requested by the Union in its letter of December 10.

Respondent denies that it violated the Act in any manner. Specifically, it states it had good reason to believe that the Union no longer enjoyed the majority support of the unit employees following the conclusion of the strike and at that time it determined not to further recognize or bargain with the Union. It denies that the strike was an unfair labor practice strike but urges that its inception was economic and that it had reached an impasse with the Union in regard to pay matters and that, when it granted certain raises which it had offered to the Union during negotiations, it was completely within its rights.

In essence, Respondent admits that, when the strike became imminent, it sought information from employees as to whether they would cross the picket line and work since it had decided to stay open during the strike and needed information to determine whether that course of action was feasible. Respondent also admits that, when asked by the employees what wage rates it would pay during the strike, it informed the employees that it would pay the rates it had offered to the Union.

Respondent offered various defenses regarding the 12 employees who were not immediately reinstated. According to it, some of those people quit prior to the strike and some were probationary employees who were not brought back since it determined they would not make good employees. Others were brought back shortly after the strike and some were recalled later, primarily because they were not needed since Respondent's business was down. Although Respondent hired five or six employees before it brought back some of those alleged as discriminatees, it stated that those hired were needed for particular jobs which those strikers were unable to perform. Respondent stated it terminated Holibaugh because he slowed down on the job and refused to perform; it denied that his union activity influenced its decision. Respondent offered various explanations for other allegations and denied it had performed certain actions.

In determining credibility where there are conflicts between witnesses, I have credited Belknap only in areas where he is corroborated by other individuals or testified to an event similar to other credited testimony. Some of Belknap's testimony went considerably further than other General Counsel witnesses and appeared to me to be embellishments on fact or his conclusions rather than direct reporting of events. In deciding to credit Belknap only partially, I noted his denial of a prior felony conviction and am not convinced by his explanation of that testimony. Belknap's rebuttal denial that Lascelles was a supervisor and "in fact I never seen Ron Lascelles or ever heard of him until I went back to work," meaning following the strike, is incomprehensible when compared to his previous testimony that Lascelles was one of the foremen of the Company and that he had heard Lascelles ask Holibaugh to perform certain work. It appears that Belknap completely disregarded his prior testimony in trying to make a point during his rebuttal testimony. Taking all of these matters together, I have concluded that Belknap's testimony is not reliable unless in the circumstances cited above.

I have not credited Holibaugh completely since there were times during his testimony when he seemed to be evasive, and I believe the testimony preponderates against him in regard to his statements about overtime, both for himself and others, and whether he urged slowdowns.

Some of the General Counsel's witnesses who worked during the strike appeared to favor Respondent's version of events and appeared more friendly to Respondent than the Union or the General Counsel. Where they testified to what President Newman or other supervisors said which might be considered violative of Section 8(a)(1), I have credited that testimony. A number of witnesses did not recall events and where opposing witnesses were able to cite what took place and give details, the opposing witnesses have been credited.

In applying Board law to the facts which I hereafter find, I have concluded that Respondent did not engage in a course of conduct, refusal to bargain, which was alleged as violative of Section 8(a)(5) of the Act. I did find that Respondent did not have sufficient reason to decide that the Union no longer represented a majority of its employees and that Respondent violated Section 8(a)(5) of the Act in refusing to recognize the Union as the representative of its unit employees and negotiate with the Union following the strike, and further violated Section 8(a)(5) in refusing to give the information the Union requested in its December 10 letter. I have also determined that Respondent, through President Newman, violated Section 8(a)(1) of the Act when he told certain employees, who had said they would work during the strike, that they could form their own union. It was also found that Director of Marketing Miller violated Section 8(a)(1) of the Act in his conversation with employee Mihuc.

I have found that the strike was an economic strike and that the parties were at impasse over wage rates and that Respondent's paying the rates and amounts which were the same or less than what it had offered to the Union during negotiations was proper and that it did not violate the Act by telling employees who stated they intended to work during the strike that it was going to pay such amounts. Since Respondent had decided it wished to run the Company during the strike and the strike appeared imminent after the last bargaining session, inquiries made of employees as to whether they intended to

work during the strike were proper under Board law. Where questions were asked by employees in regard to the possibility of being fined by the Union, I do not find that the answer given by Newman that the employees could resign from the Union to forestall such action violated the Act, nor do I find that Respondent initiated or sponsored the document begun by employee Piper for resignations from the Union.

On the basis of the evidence, I have concluded that Holibaugh was not discharged in violation of the Act. Respondent's explanations for its recall or nonrecall of the 12 named individuals, one of whom the General Counsel agreed to exclude and drop from the complaint, I find have not been rebutted by the General Counsel and I have determined that Respondent did not violate that allegation of the complaint.

Insofar as the record shows, all parties were afforded full opportunity to appear, to examine and cross-examine witnesses, and to argue orally at the hearing held in this case.

On the entire record in this case, including the exhibits and testimony, and noting the contradictions in the testimony, and on the credibility resolutions I have made, I make the following:

FINDINGS OF FACT

I. COMMERCE FINDINGS AND UNION STATUS

Respondent is an Ohio corporation with its plant and office in Bryan, Ohio, where it engaged in the manufacture and nonretail sale of mobile homes. During the 1976–77 period Respondent annually purchased and received, directly from points outside Ohio, goods and materials valued in excess of $50,000.

Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent admits, and I find, that International Union, Allied Industrial Workers, AFL–CIO, and its Local 712, are labor organizations within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *Background and Undisputed Facts*

Most of the allegations in the complaint concerned Company President James Newman who, together with his wife and daughters, owned and controlled the Company. Newman testified that he was the principal designer of the mobile homes his Company built and, to a large extent, designed and built the building used by the corporation. The original complaint alleged that Steve Miller occupied the position of "supervisor" and was an agent of Respondent acting in its behalf and a supervisor within the meaning of the Act. Respondent's answer to the complaint admitted the allegation of the complaint, except it denied that Miller occupied that position. Miller's position, according to Respondent, is that of director of marketing. In regard to the 8(a)(1) complaint allegation about Miller, Respondent took the position that Miller was not a supervisor of the employees in the unit, but that his capacity was head of sales and directing salesmen, and denied that he had been made a supervisor for a day over the employees in the production and maintenance (P and M) unit. From the admissions and from the testimony, it is clear that Miller is a supervisor in the sales department as director of marketing, and whether he had direct supervision or not over the P and M unit employees for a short time is immaterial since he is still a supervisor acting in Respondent's behalf and speaks for the Company in his capacity. Therefore, Respondent is responsible for the remarks I found he made.

The sales department inspected finished trailers to determine that they met Company product standards before accepting them for delivery to customers. Miller and other salesmen would examine mobile homes and mark a "squawk sheet" identifying needed repairs or work. If minor matters were involved, such as puttying over nail holes or removing excess putty, etc., the salesmen or Miller might effect the repair.

Under Newman were Plant Manager Clarence Brannun and Plant Superintendent Ron Lascelles. Respondent in its 10 or 11 departments had senior employees who were designated as group leaders and were paid 10 percent more than regular employees for their work. The parties appear to have agreed that they were not supervisors. According to Respondent, its operation was cut up into a number of subdivisions and there might or might not be a group leader in each of these subdivisions.

Respondent built both single and double-wide homes which would start their journey through the plant at the first station where the frame was placed, followed at other stations by the floor, then the walls and various work done at the stations until the product was ready to be rolled out of the plant at the last station and placed in the yard. Sometimes final finishing touches or repairs were needed after the product left the plant, while it was in the yard.

Respondent did not produce products for inventory but built only for a confirmed order which it tried to fill in 3 weeks.

During the fall of 1976, Respondent had 40 P and M unit employees according to the available exhibits, and they were producing around three single homes a day. Newman said he sought to produce a floor, that is one single-wide product or half of a double-wide home, with the expenditure of 120 man-hours or less.

During the fall Respondent received an order for six double-wide units, which were to be fancier and better finished than its regular products and consequently took more time to complete. But since 12 floors would be only a small percentage of Respondent's production of 3 floors a day over a 2-or 3-month period, this order would not explain the slowdown in production Respondent testified it experienced.

The plant is partially open and apparently it is rather difficult to work in some parts of the plant during cold weather. Respondent stated that usually the winter season brings a slump in orders and for the two winters prior to the 1976–77 period it had closed its plant completely except for a few personnel.

Respondent stated that its orders were low in the winter of 1976–77 and it did not need to replace all of its

employees and return to its prestrike complement for that reason; additionally, it sent some employees to prepare and show its product at an annual mobile home show in Louisville, Kentucky, and these employees were gone for several weeks.

The 3-year contract between Respondent and the Union, among other things, contained a checkoff authorization clause and a provision that the employees in the unit were to become members of the Union after 30 days' employment. The contract also provided for a 45 working day probationary period for all employees and contained a clause that either party had to give the other 5 days' notice if it wished to terminate the contract.

Respondent claimed that initially it did not deduct dues since authorization cards were not provided for a period of more than a year after the contract commenced. Eventually dues authorization cards were provided and the employees signed them and dues and initiation fees were thereafter deducted from employees and forwarded on a monthly basis to the Union.

The employees belonged to an amalgamated local union whose offices were somewhere other than in Bryan, Ohio. During the summer of 1976, there was a renewed interest in the Union and regular monthly meetings of Respondent's employees began to be held. The members sought their own local union, petitioned for it, and it was granted by the International. An election was held in August and officers, a bargaining committee, and stewards were elected. William Hamilton was elected president, Harry Holibaugh, vice president, Phyllis Hicks was elected secretary and became the treasurer after the strike commenced following Denny Sanders' resignation from the Union. Employees Piper, Eddy, Paxton, Sheets, and McCloud were trustees.

Respondent and the Union entered into negotiations for the renewal of the contract in October and met on five separate occasions, the last date being Friday, November 12.

Among the objects which the Union sought were a minimum wage scale of $5 per hour and the elimination or some modification of compulsory overtime. The Company had proposed a wage scale less than what the Union sought and suggested a new pot bonus system which would pay employees, after deducting labor and other costs, 7-1/2 percent of the inventory price of the finished product. It was agreed by Union Representative Campbell during his testimony that the 7-1/2 percent pot bonus figure would be in excess of 10 percent of the employees' wage rates.

At the November 12 negotiation meeting, the parties went through various proposals. Some agreements were made but the main sticking point was wages. After receiving a different proposal from the Company and the Union's rejecting it, the parties left the meeting room. They met outside on the street, conferred further, went back inside and met again, secured agreement on a few other items, and Respondent revised its wage rates to a base in the first year of the contract of $3.65 per hour, with $3.85 for employees with 6 months' seniority, and $4.10 an hour for employees employed longer than a year. Raises for the second and third year appear to average somewhere around 7 to 8 percent. The union negotiating committee again rejected Respondent's offer as insufficient but said it would take it to a meeting of the employees, although recommending against it, and that the meeting would be held on Sunday, November 14.

There were 32 employees at the union meeting on Sunday, November 14, and they rejected Respondent's final contract proposal by 31 to 1. A vote was then taken on whether to strike and the result was 28 for striking, 2 against, and 2 void.

A notice reciting the rejection of the Company's offer and terminating the contract signed by Roy Campbell was delivered to Newman at home by Holibaugh, Belknap, and Eddy who told Newman, when he asked, that the action meant the employees would strike as of midnight November 19–20.

Holibaugh was terminated on Thursday, November 18. A picket line was established at the Company's premises shortly after midnight on Saturday, November 20. It appears that some 13 people who were on dues authorization prior to the strike signed a document resigning from the Union, and most of them worked during the strike. The number of employees who picketed dwindled during the strike and some of the employees who stayed out and did not work did not picket.

The picketing employees held a meeting in the evening of December 1 and decided to terminate the strike. Union Representative Campbell informed his superior of the vote, and his superior said he would notify the Company by letter. Some of the picketing employees returned to work the following day. A letter from the Union, dated December 1, making an unconditional offer on behalf of all striking employees to return to work, was received by the Company between December 2 and December 3. According to the complaint and amended complaints, the 12 people listed in paragraph 39 were not returned to work then and some were never asked to return to work.

On December 10, Union Representative Campbell sent a letter to President Newman requesting a list of all employees with their dates of hire, addresses, rates of pay, and the department in which they were working. The letter also requested the continuation of dues deductions and stated that the Union was prepared to resume contract negotiations on December 21, 22, or 23. Newman's return letter, dated December 14, stated that according to the contract and Respondent's attorney the Company could not deduct dues from the employees but enclosed a list showing the amounts deducted from employees for November. Campbell responded on December 17, saying Newman had not answered his request for further negotiations and for the information sought in his previous letter. On the same date Respondent's counsel wrote Campbell, saying that because of previous commitments he would be unable to meet on the negotiation dates proposed by the Union and suggested that the Union call him after the first of the year to make arrangements for a negotiation date. He stated that the checkoff authorizations expired with the termination of the contract and Respondent would not deduct dues from any of its employees' wages.

There were no further negotiation meetings between the parties, with neither of the parties seeking to get in touch with the other and the Union filing the initial charge in this case on December 27.

B. *Events Prior to the Strike*

1. Phyllis Hicks was one of the most senior employees at Respondent and built cabinets for installation in trailers. In August 1976, she was elected recording secretary and was a member of the negotiation committee, participating in the five negotiation sessions. During the strike she became the treasurer when the Union replaced members and officers who had resigned from the Union. She testified that after either the second or third negotiation session in late October, while she was in the cabinet shop, Newman said he had offered a fair contract. She said she did not think it was fair because the wages were not much different from those in the prior contract. Newman said he could not afford to pay $5 an hour (base salary) but would have to close his doors because he would go bankrupt. Hicks was asked to name the members of the negotiation committee, she did so, and then was asked if they were present during this conversation, and the transcript shows she said yes. This answer would certainly nullify the allegation.

Hicks testified that on Saturday, November 13, while in the cabinet shop, Newman asked if she would cross the picket line if there was a strike. She said she would but would not bring her car across the picket line and Newman responded that either he or one of the supervisors could bring her through the picket line. She testified Newman said if they did not have the Union he could afford to pay some of them better wages.

She had another conversation with Newman later on the same day in uptown Edgerton, Ohio, in which she again told Newman she would cross the picket line. He said the Company had offered a just and fair contract and they would bring her across the picket line. She stated that Newman said she would have to withdraw from the Union so she would not be fined.

On the following Monday, she saw Newman near the cabinet shop and told him she would not cross the picket line. He told her he would bring her across the picket line, but she repeated she would not cross it.

Newman testified he decided to try to keep the plant open for work in the event the employees struck and he attempted to determine whether enough employees would cross a picket line to make his decision feasible. He agreed that he and Phyllis Hicks talked on and off about the strike for a couple of weeks prior to it and that she told him she wanted to work and he told her he would help her come across the picket line. Newman also stated that some of the employees told him they were afraid to work during the strike because they had been told they could be fined $500 by the Union if they did so. He said he asked his counsel about it and was told that employees could not be fined if they were not members of the Union and he in turn gave this information to a number of the employees. Newman admitted he spoke to Phyllis Hicks about the negotiations and the amount of pay the Union was demanding and stated that what he said to her was the same thing he had said to the entire union negotiating team during negotiations, and Hicks said that was true. Newman said that on Monday Hicks reversed herself and said she was not going to work during the strike; she said she had received some threatening telephone calls and was worried. Although stating at one point that she did not tell Newman on Monday, November 15, about being concerned because of threatening telephone calls, Hicks later said she might have discussed the subject with Newman and acknowledged that she did receive a telephone call and was afraid for her daughter.

The above testimony appears to relate to complaint paragraphs 12 and 13. Complaint paragraph 12 alleges that Newman interrogated an employee regarding the employee's intention to cross the picket line on or about November 13.

It was apparent following the union committee's rejection of Respondent's contract offer on November 12 that the parties were headed for a strike. In these circumstances and considering both Newman's question to Hicks and his later questions to other employees in the following week as to whether they would work during the strike, it appears that *Mosher Steel Company*, 220 NLRB 336 (1975), controls the situation rather than *W. A. Sheaffer Pen Company Division of Textron, Inc.*, 199 NLRB 242 (1972). The Board has held that inquiries of employees as to their strike intentions are not *per se* unlawful where the record shows there is a reasonable basis for fearing a strike and respondent seeks information on which to determine whether it can keep its business open during the strike. One *caveat* is whether such inquiries are coupled with threats or promises. I find that the discussions between Newman and Hicks did not contain threats or promises and that these were questions asked by Newman to determine whether to attempt to keep his business open. I would therefore dismiss complaint allegation 12, finding that it is not substantiated.

Complaint allegation 13 alleges that Newman threatened an employee with plant closure rather than "reasonably considering the Union's wage demands, in order to discourage employees from engaging in a protected strike." Hicks' testimony was that Newman said he could not pay $5 an hour and would have to close his plant doors because he would go bankrupt.

Prior to this time, Respondent and the Union had engaged in five negotiation sessions and Respondent had made three different wage proposals, altering its proposal a second time during the last negotiation session. It is clear that Respondent did consider the Union's wage proposal, made several counterproposals, and rejected the Union's proposal on the ground it could not afford it.

There is nothing in Hicks' testimony that would show Respondent did not reasonably consider the Union's wage demands, and the General Counsel has not demonstrated by any other evidence that Respondent did not "reasonably consider" the Union's position. The lines on pay were drawn sharply with the Union proposing and not backing away or compromising on its $5 position.

The fact that Respondent did not accept the Union's position but argued that having a basic rate that high

would bankrupt it is not any proof that Respondent did not consider the Union's position in a reasonable manner.

The testimony falls far short of supporting complaint paragraph 13, and I find, accordingly, that this allegation must be dismissed.

Complaint paragraph 15 alleges that Newman on or about November 13 unlawfully suggested that an employee resign from the Union "in order to avoid engaging in a protected strike and further, to avoid being fined by the Union for failure to engage in an authorized strike." The testimony of Hicks was that Newman said she would have to withdraw from the Union so that she would not be fined after she told him that she would cross the picket line. Newman asserted in his testimony that his response to employees concerning fines was based on their questions to him concerning the issue. It is clear that Newman did not say anything to Hicks about resigning from the Union "in order to avoid engaging in a protected strike." The Board has found violations where an employer urged employees to resign from the union in an effort to undermine union strength or undercut employee support of a strike. This was not the case here. The employee, known by the Company to be a union member and officer, had said she would cross the picket line and physically not support the strike, and the information was given to her on the basis of current rumors that union members who crossed the picket line would be fined $500.

In these circumstances, I would not find that Newman violated Section 8(a)(1) of the Act since the threat of fines was being bruited around and this information was given to an employee union member who said she would cross the picket line. There is no testimony that she did not ask Newman about the fines. Accordingly, complaint paragraph 15 is dismissed.

2. Hicks testified that on either November 15 or 16, while in the cabinet shop, Steve Miller asked if she was going to cross the picket line if there was a strike and she told him that she would not cross the picket line.

The General Counsel's brief states that employee Darlene Dangler corroborated that Miller approached Hicks. However, Dangler's testimony is only that she saw Hicks and Miller talking.

Miller denied that he had any conversation with anyone in the cabinet shop and specifically said that he had no conversation with Hicks.

Assuming, without deciding, that Hicks' testimony is correct, I would find it insufficient to support the complaint allegation. There are no accompanying remarks which would threaten or promise anything to Hicks. The issue is whether this, by itself, is unlawful interrogation.

Miller, as the director of marketing and head of sales, had a direct interest in whether trailers were going to be manufactured and produced through an impending strike. Although Miller did not have Newman's responsibility in making the decision whether to operate during the strike, he was a supervisor who could report his findings to Newman. There appears to be no coercion extant or intended in this conversation, and I find that the testimony does not support the complaint paragraph and that paragraph 17 must be dismissed.

3. Jan Piper, who had worked for the Company some 4-1/2 years and was the person with the most seniority, testified that between November 13 and 15 President Newman asked if he would work during the strike and he replied that he probably would.

Assuming that this testimony is meant to support complaint paragraph 16, I find that it does not substantiate it and that complaint paragraph must be dismissed.

As stated above, after negotiations had terminated and possibly after the employees had voted to strike, there was no question but that a strike was imminent, and Respondent, seeking to determine whether it would have enough employees to run the plant during the strike, asked some of its employees if they would work during the strike. This questioning in this manner and for this purpose was proper and not coercive interrogation. See *Mosher Steel, supra*. Therefore, complaint paragraph 16 must be dismissed.

4. Kenneth Brown testified that after the strike vote had been taken he asked if Newman was going to keep the plant open and Newman said, "Yes, who is going to work?" Brown said he talked to Newman about going to the Edgerton plant (Mini Mansions, a sister corporation) if Newman was not going to keep the Bryan plant open. Dennis Sanders testified that during the week of November 14 Newman asked if he was going to strike, and he said it looked like it and asked Newman if he could work if Newman was going to stay open. Newman said he was going to stay open and Sanders could work if he wanted to.

Presuming that the testimony of Brown and Sanders is meant to support complaint paragraph 19, I find and conclude that these remarks and questions by Newman were proper under these circumstances and I accordingly will dismiss complaint paragraph 19.

5. It is not known what evidence the General Counsel would assert substantiates complaint paragraph 20 which alleges that Newman interrogated an employee during the first 3 weeks of November regarding the employee's opinion as to whether employees would engage in a strike. If the General Counsel was relying on the testimony of Phyllis Hicks or Kenneth Brown, and knowing of no other testimony which might be relevant, I do not feel that such testimony supports this complaint paragraph and I accordingly would dismiss paragraph 20.

6. The General Counsel has not suggested what testimony substantiates complaint paragraph 23. The only testimony which seems to come somewhere near the allegation that Newman interrogated an employee concerning the employee's knowledge of other employees' intentions of engaging in a strike would be Brown's testimony that, after he asked if Newman was going to keep the plant open, Newman said, "Who is going to work?" If this testimony is meant to substantiate complaint paragraph 23, I find that it fails to do so. The context of the conversation would not permit such a strained interpretation. There being no other testimony which I can find which would substantiate this complaint paragraph, I dismiss complaint paragraph 23.

7. Complaint paragraph 18 alleges that Newman threatened employees during the week of November 14

that Respondent would close its plant rather than reasonably consider the Union's wage demand for the purpose of discouraging employees from engaging in a protected strike.

Nile Eddy, who had been with the Company a number of years, was a member and trustee of the Union and on the bargaining committee. He attended three or four negotiation sessions, resigned from the Union prior to the strike, and worked during the strike. At the time of the hearing in this case he was an assistant supervisor and was called by the General Counsel as an adverse witness.

Eddy said he, along with others, rejected the Company's contract proposal and voted to strike and was one of the three who went to Newman's house to give him the message that the Union had rejected the Company's offer and voted to strike. During the week prior to the strike Eddy talked to Newman about the bargaining positions, stating that he thought what the Union asked for was fair and asked why Newman did not want to pay the the $5 base rate. Newman said a lot of people in the factory were not doing their jobs and that he could not pay people who were lazy and stood around doing nothing. Eddy asked why they could not get rid of those people. Newman replied that if they could get rid of the people that did not want to work he could afford to pay a halfway decent wage. During this conversation Newman asked if they were going to strike, and Eddy replied that they were not putting barrels out there for nothing. Eddy said that, though he did not remember it precisely, it is possible Newman said if the employees went out on strike he would probably have to close the plant.

Employee Anthony Paxton, who had been with the Company over 2 years at the time of the strike, said he told Newman while they were conversing in the plumbing department that he would strike for more benefits but not for more money. Newman said he could not pay $5 an hour, that he would close the plant down before he would pay that much because people were not doing their jobs and he would lose money. Paxton said he agreed with Newman that he would lose money at that rate.

There is no testimony or evidence that Respondent would not or did not reasonably consider the Union's wage demand, as noted *supra*. The statements in the context shown above do not amount to a coercive threat to close the plant but rather appear to be statements of what Newman felt might become necessary if the employees did not work during the strike or if Respondent had to pay a wage rate which it thought would drive it into bankruptcy. Again, presuming that Eddy's and Paxton's testimony is meant to substantiate complaint paragraph 18, I find and conclude they do not do so and I dismiss paragraph 18.

8. Employee Ernest Williams, who was a group leader, stated that on Thursday, November 18, Newman asked if he was going to work on Monday. He told Newman there was a strike vote and there would be a strike and he would be on the picket line.

Complaint paragraph 22 alleges that Newman interrogated an employee on or about November 19 regarding the employee's intention to engage in or refrain from engaging in a strike. Assuming that Williams' testimony is meant to substantiate complaint paragraph 22, and/or complaint paragraph 24 which is phrased precisely the same, I find that the testimony does not substantiate either paragraph and that they should be dismissed on the basis that questioning an employee as to his intention to engage or not engage in a strike where the strike is imminent and respondent is attempting to keep its plant open during the strike is not coercive or violative of the Act as per *Mosher Steel, supra*, and I dismiss complaint paragraphs 22 and 24.

9. Gary Woodall testified that on November 18 Newman asked what he thought about the whole matter pertaining to the strike and he replied that he did not care and walked away. He said that Newman asked him this question two or three times that day.

Employee Robert Belknap testified he was asked by Newman in one part of their November 18 talk what he felt about the Union and he responded that it was good for both the Company and the employees. Newman said he meant concerning what they were negotiating for. Belknap replied that they were being fair in what they asked for, and Newman replied that they were not, that $5 an hour was not fair because it would break him and that a lot of the employees would slack off and not work if they were getting $5 an hour. Belknap said he replied, "You're the boss and you could weed out those people that won't work and get rid of them and get employees that will work." He said Newman asked what he thought about working under a gentleman's agreement and going nonunion if they went out on strike. He said he replied no, that he had taken an oath when he joined the Union and he felt obligated to the people he represented who had voted him in office. He said Newman said he would make it worth his while if he would stay and he replied no, he could not do it. Newman supposedly then said Belknap was not being fair, and he replied that he could not withdraw "like you want me to." The conversation turned to an injunction the Company was going to get, and Newman was asked whether he had shown Nile Eddy some canceled orders and he responded yes, because he could not fulfill the contracts. Belknap said he asked why Newman did not tell that to the entire committee. Newman supposedly responded he was glad that was brought up, that he could make it worthwhile if they withdrew from the Union, stayed in the shop, and worked instead of going out on strike. He said he told Newman he could not do that and Newman said they were not going to hurt him, he would have a new crew coming into the plant. He also stated that Newman said there would be a piece of paper coming around the shop for people who would stay and work to sign and, if he changed his mind, the paper would be floating around.

Complaint paragraph 21 alleges that Newman unlawfully interrogated an employee regarding the employee's attitude towards the Union and the employee's position on the Union's bargaining demands. If Woodall's testimony is meant to substantiate this allegation, I find that it does not do so.

As stated *supra*, in view of Belknap's overall testimony and the attack on his credibility, I have determined not to credit Belknap in areas which are not corroborated by other employees or where there is no credible similar testimony. It appears that Belknap embellished his testimony since he retreated from it somewhat during cross-examination.

Newman testified that about 2 days prior to the strike he talked with Belknap concerning whether Belknap would work during the strike; Belknap said he would not and hoped there would not be any hard feelings. Belknap told him that one of the reasons was that the people had elected him and he felt an obligation since he was on the bargaining committee and was afraid of violence. Newman told Belknap there were no hard feelings. Belknap said Newman would not have the trouble if he paid $5 an hour. Newman replied he could not afford to. Newman denied saying anything about Belknap's membership in the Union or withdrawing or resigning from the Union. He also denied that he had a conversation with Belknap about working under a gentleman's agreement. He said he had mentioned those words when he had talked to a group of employees in the sidewall department earlier that week. He stated that at that time Sanders, Paxton, and six or eight other employees had asked if they could work during the strike and he told them that he was going to have the plant open and anybody who wanted to could come in and work. They wanted to know whether they would be under a contract and he replied no, but they could have a gentleman's agreement between them. Newman denied stating anyting to Belknap about a paper going around, saying he did not know anything about any paper until Piper showed him a paper in the lunchroom the day prior to the strike.

As between Belknap and Newman, I credit Newman's version of the events. It appears from the transcript that Newman had a good grasp of the facts and was able to detail what occurred, when, and who was present. Belknap's testimony seemed to be hazy in comparison.

Insofar as complaint paragraph 21 is concerned, I credit Newman's version of the conversation and find that Newman was asked by Belknap what he was going to do during the strike, and he replied that he was going to get some new people if they went out on strike, and that they had a conversation concerning whether Belknap would work during the strike. Accordingly, I dismiss complaint paragraph 21 as not being substantiated by the testimony of either Belknap or Woodall, or of Holibaugh *infra* , and I do not find any other credible testimony which would tend to support this paragraph.

In regard to complaint paragraph 36, which I assume is meant to be substantiated by Belknap, I find that Belknap's testimony does not substantiate it and that it must be dismissed.

Paragraph 36 alleges that Newman engaged in direct negotiations with employees and sought assistance of the employees in undermining the Union and dissipating its majority status "by coercively suggesting to them that they resign from the Union, draft and circulate a petition among employees for the purpose of soliciting resignation from the Union, form their own separate Union and enter into a separate 'gentleman's' agreement with Respondent governing the employees' terms and conditions of employment."

Belknap was the only witness of all of the General Counsel's witnesses to suggest that Newman said there would be a paper going around the shop for people to sign who would stay in and work. I credit Newman's denial of having any such conversation with Belknap. Newman readily admitted using the term "gentleman's agreement" but stated that it did not occur in any single conversation with Belknap but was mentioned to a group of employees that he talked to in the sidewall department when they had asked if they could work during the strike and wanted to know if they would be under a contract. There is nothing to suggest in his answer that a "gentleman's agreement" meant that they were going to have a separate contract. Newman discussed with employees that he would pay them the amounts which he had offered to the Union during the negotiations. Since there is no reliable testimony to tell us what a "gentleman's agreement" would consist of, I can only assume that the language meant that he would agree to pay them the amounts which he stated and not otherwise alter their terms and conditions of employment, and to that extent that was an agreement between them but not a contract.

There is nothing in Belknap's testimony concerning Newman's suggesting employees resign from the Union as such, other than the statement about a paper going around. Further, there is nothing which would demonstrate that Newman suggested a paper be drafted and circulated to such purpose, and there is no testimony by Belknap that Newman suggested that the employees form their own separate union. Accordingly, on the basis of my credibility determinations and the lack of support for the allegation in complaint paragraph 36, it must be dismissed.

Complaint paragraph 27 alleges that Newman engaged in direct negotiations with an employee "by coercively informing the employee of Respondent's opinion of the Union's wage demands." Assuming that this allegation is meant to be substantiated by Belknap's testimony, I find that the testimony does not substantiate the allegation and I am not completely clear that this allegation sets forth a violation of the Act, in that it is not clear what is meant by "coercively informing." In any event, I find that complaint paragraph 27 is not substantiated by any credible evidence and must be dismissed.

Complaint paragraph 28 alleges that on or about November 18 Newman engaged in direct negotiations with an employee and promised a benefit by informing the employee Respondent would enter into a separate gentleman's agreement with him if he refrained from engaging in a protected strike.

Assuming that this complaint allegation is meant to be substantiated by Belknap's testimony, I note again that I do not credit Belknap completely and do credit Newman's version of the conversation he had with Belknap. Noting again the reference to a gentleman's agreement, I find that this complaint paragraph has not been substantiated by any credible testimony and it must be dismissed.

10. Charles Albertson, who had been with the Company approximately 4 months at the time of the strike, was a welder and a member of the Union. He testified he had a conversation with Newman on the day before the strike in the frame shed in which Newman said he was not going to meet the Union's demands and was planning on taking a trip to Florida and closing the place down in December anyway. According to Albertson, Newman also said that while the employees were out on strike they would not be drawing any unemployment and they could starve as far as he was concerned.

Newman testified that on November 17, which was his birthday, he was in the frame shop with Steve Miller, Albertson, and others, and someone said to Miller that they ought to go to Florida. Newman said the plant would be locked up for the winter anyway and he thought he would go down there and buy a condominium and, turning to Albertson, joked, "Why don't you come down and wash my car and mow my yard?"

With the historical background that the plant had been closed during the two previous winters and, here, a strike was imminent which might possibly close the plant depending on how many people came in to work, and these remarks being made in fun according to both Newman and Miller, I find that there is no violation of the Act as alleged in complaint paragraph 26 because I do not find that these were threats of Respondent's economic reprisals if the employees struck. I further find that there is no substantiation for the allegation that Respondent would not reasonably consider the Union's wage demands as explained *supra.*

Assuming again that complaint paragraph 26 is meant to be substantiated by the testimony of Albertson, I find that it does not do so and accordingly I will dismiss complaint paragraph 26.

11. Complaint paragraph 14 asserts that on or about November 18 or 19 Respondent assisted employees in the preparation of "a petition" setting forth union members' intentions to resign from the Union and allowed the petition to be circulated among its employees throughout its facility.

Jan Piper testified that he had a meeting with Newman and employees Sanders and Paxton in the office on either November 18 or 19. He testified that they went to the office to tell Newman they wanted to work during the strike because they needed the money. Newman said he was not allowed to negotiate with them. Piper, without attribution, said there was some talk about resigning from the Union and forming their own union and working under a gentleman's agreement where they would look out for each other, but he was not sure that Newman said anything about resigning from the Union. Newman did say something about a gentleman's agreement but Piper could not define it. Piper said Newman might have talked about a 10-percent increase in piecework but was not sure. During the conversation Newman said he would not pay $5 an hour and did not care if they stayed out all winter.

In regard to a "petition" or document, Piper said that he and others in the plant were talking about the possibility of a $500 fine for working during the strike and that this conversation had been going on before they went in to see Newman; he said this might have been brought up during the conversation with Newman.

It seems reasonable from what Newman testified to at various points that, if asked concerning this, Newman would have replied that they could not be fined if they were not members of the Union.

Following the meeting with Newman, Piper went several offices away to Newman's secretary, Mrs. Ellis, and asked her to type something for him. She agreed, and he dictated the folowing: "The following people do not wish to be represented by Roy Campbell or Local 712, Allied Industrial Workers of America." The document contains a typewritten date which appears to be November 18, 1976, and a handwritten 9 over the 8. On the document itself, which is Respondent's Exhibit 2, there are 13 purported signatures. It does not appear that any other employees were with Piper when Ellis typed this paper and an envelope addressed to Union Representative Campbell. Piper said that Ellis had typed other things for him and other employees on occasion. The postage on the envelope appears to be from a postage meter, and Piper testified that he asked someone in the office to put the postage on the envelope. Ellis testified that the postage meter is not in her office and that she was not asked to place the postage on the envelope. She stated that, if she had been asked, she would have charged Piper 13 cents for the postage.

Piper said he took the paper into the plant and gave it to some employees in his department who passed it around and eventually returned it to him, and he mailed it. He agreed that he may have flashed the document in front of Newman but he did not think that Newman looked at it closely, that Newman did not ask to see it but that he showed it when he told Newman that 12 or 13 people would work during the strike.

Newman testified that Piper told him he wanted to work during the strike and that a number of others talked to him about resigning from the Union, including Paxton and Sanders. In regard to the document, he stated that Jan Piper showed it to him the day before the strike in the lunchroom and that he told Piper he did not want it. He testified that he had received advice from his counsel that he should not get involved with anything like that if it went on. He said a copy of it was put in his mailbox on either Thursday or Friday prior to the strike, that it appeared about the same time a group came into his office and told him that they were going to work during the strike and that there were others who would work also.

Newman testified that approximately 2 weeks prior to the strike he was asked by Sanders and others about working during the strike; he told them his attorney had said that if the employees were not members of the Union they could not be fined. Asked if he said anything to a person about not circulating a document when it was shown to him, he said that he did not know that it had been done or when. Newman admitted that on occasions prior to the strike he told some employees that he felt the Union's proposals were unreasonable. He said that a lot of employees had in their minds that they were going to get $5 an hour and that this was unreasonable

to him; when he was asked by any of the employees about the negotiations and the amount of pay, he would respond that the Union's demand for that amount was unreasonable.

While the complaint refers to a "petition," it is clear that there was no petition such as to sponsor a decertification or another union that was circulated insofar as this transcript shows. What the General Counsel refers to as a "petition" is actually a statement of resignation from the Union which contains 13 purported signatures.

Complaint paragraph 14 alleges that Respondent unlawfully assisted employees in the preparation of this document, that they knew of it and allowed it to be circulated among its employees in its plant during worktime. To support this allegation, it appears that the General Counsel assumes that Respondent had and enforced in its plant a no-solicitation rule. The transcript and exhibits do not demonstrate that Respondent had or enforced such a rule or that the circulation of a document during worktime was prohibited by Respondent.

Insofar as the testimony demonstrates, there was no participation by any members of management in the preparation or circulation of the document. The only management knowledge demonstrated by the testimony is that it was shown by Piper to Newman at lunchtime. There is no testimony that any supervisor knew or approved of the circulation of the document. Piper testified that originally he had the document prepared and gave it to others to circulate and that, after others had signed it, it came back to him. Thus, there is no evidence as to how many signatures were on it at the time it was shown to Newman. It is just as feasible that the document was completely signed by noontime when Newman saw it, as it is feasible that it was unsigned or partly signed. There is no way of charging Newman with foreknowledge of the circulation of the petition and no way to demonstrate that he knew the petition was circulated in the plant during worktime.

The General Counsel has proved that a secretary for Respondent typed the two-line document on company paper and addressed an envelope with the Union's address. It has not been proven who authorized the expenditure of 13 cents for postage for the envelope.

At best, we have ministerial clerical assistance from Respondent and nothing else proven in regard to the preparation and circulation of this document. On the status of the evidence, the allegations of complaint paragraph 14 have not been substantiated, and I conclude that it must be dismissed.

12. Harry Holibaugh was a member of the negotiating committee both as the vice president and, after President Williams resigned, as the president of the Local. He testified that on November 18, the day he was discharged, while at work Newman asked what it would take to end the strike and he replied it would take what they asked for, $5 an hour. He said Newman replied he could not afford that and at that rate of pay some of the people would not have an incentive and would just goof off. Holibaugh responded that Newman would be surprised how well they would work if he paid them a decent wage. Newman asked again if it would take $5, and he replied yes and the conversation ended.

Holibaugh, after first denying it, admitted on cross-examination that this conversation was practically the same as they had during various negotiation sessions. He agreed that Newman said, if he paid $5 an hour as a minimum rate, there would be no way he could motivate the employees to work.

Newman testified that he had several conversations with Holibaugh concerning the status of the negotiations in the week prior to the strike. He asked Holibaugh if they would ever get things settled and Holibaugh said yes, if they got $5 an hour. He told Holibaugh he could not afford that and testified that this was the same thing they had been saying to one another during the negotiations. Holibaugh stated that maybe they could get some of the men who did not want to work out of the plant but indicated the committee had to have $5 an hour to keep from striking.

It is not known if Holibaugh's testimony is meant to substantiate complaint paragraph 21 which alleges that on November 18 Newman interrogated an employee regarding his attitude towards the Union and his position on its bargaining demands. It is assumed that Holibaugh's testimony is meant to substantiate complaint paragraph 33 which alleges that on November 18 Newman engaged in direct negotiations with an employee in the absence of the negotiating committee by seeking the employee's assistance in settling the strike. Complaint paragraph 34 alleges that during October and November Newman discussed piece rate and vacation pay proposals with an individual and thereby engaged in unlawful individual bargaining. It is not known whether Holibaugh's testimony is thought by the General Counsel to substantiate complaint paragraph 34.

Considering complaint paragraphs 21 and 33 together, the evidence shows that on November 18, less than 48 hours before the strike was due to start, Newman was asking the president of the Union if the strike could be avoided and how. This question was not addressed to Holibaugh as an individual employee, but rather as the principal in-plant spokesman for the Union. If Holibaugh's answer had indicated a change in position, it is likely further negotiations would have ensued. However, his answer demonstrated that the Union was holding fast to the wage demands and was not prepared to compromise it at that juncture. Newman did not indicate his position would change and any prospects for a compromise faded. This conversation was not an effort to circumvent or subvert the Union but rather a question directed by Newman to the Union as to whether some movement could be made at this last minute to avert the strike. Whether the remark was made in a joking or a serious manner is immaterial. I do not find that complaint paragraphs 21 or 33 are substantiated by the evidence. I know of no other testimony which would substantiate the allegations of complaint paragraph 33 and accordingly I dismiss it. Complaint paragraph 21 was considered *supra.*

If Holibaugh's testimony is meant to substantiate complaint allegation 34, I find that it does not do so for the reasons stated above. Further, there is no testimony that discussions between Newman and Holibaugh took place

at any time other than the week immediately prior to the strike.

The next question is whether the testimony of Nile Eddy or Dennis Sanders substantiates paragraph 34. Eddy testified that he told Newman he thought the amount of money the Union asked for was fair. Eddy said he went to Newman's office to talk to him about the status of negotiations and wanted to know why Newman would not agree to the Union's demand. Newman said he could not afford a base rate of $5 when some of the employees would not work. There is nothing in Eddy's testimony about vacation pay. Eddy's testimony will be considered further in regard to complaint paragraph 31 *infra.*

Sanders testified that during the week prior to the strike he and employees Kenny Brown, Leroy Stantz, Tom Farley, and a few others were discussing what the base rate would be if they worked during the strike. Newman walked by and Sanders asked Newman what the base rate would be if they worked during the strike. Newman said it would be $4.10 for the ones who were there a year, $3.65 for the ones under 6 months, and $3.85 for those between 6 months and a year. They also discussed that instead of the 7-1/2 percent pot bonus on the invoice price they would get a 10-percent wage bonus, which while a higher percentage would be less money than the Company's proposed pot bonus. There is no testimony that anything was said about vacation pay. Sanders' testimony will be considered further regarding complaint paragraph 35.

I do not find that any of these conversations substantiate the allegations of complaint paragraph 34 since the question concerning rates to be paid during the strike was a legitimate question and was asked by the employees of Newman, and Newman responded as both Eddy and Sanders testified. With the subsequent finding that an impasse concerning wages existed prior to the inception of this economic strike and Respondent was free to effectuate the amounts it had offered the Union, it is clear that this was not individual bargaining but an announcement of Respondent's plan. The alteration of the pot bonus was not unlawful, as will be discussed *infra.*

I do not find that either of these conversations violated Section 8(a)(1) of the Act and accordingly I will dismiss complaint allegation 34.

Sanders' testimony is assumed to relate to the allegation in complaint paragraph 30 which alleges Newman unlawfully engaged in direct negotiations with employees by offering them Respondent's last wage proposal if they refrained from striking. The testimony does not substantiate this allegation since, as I will find *infra*, the parties were at an impasse over wages and Respondent, in attempting to work during the strike, could tell its employees what wages it would offer to employees who agreed to work during the strike. Therefore, I will dismiss complaint paragraph 30.

13. Complaint paragraph 32 is very similar to paragraph 30 in alleging that on November 19 Newman negotiated directly with employees by offering them the last wage proposal he had offered the Union in negotiations.

Assuming that Paxton's testimony is meant to substantiate this allegation, I find that it does not and that the paragraph must be dismissed.

Paxton, with fellow employees Beatty and Stantz, was in the plumbing shop on November 19, and they asked Newman if the pay rate during the strike would be the same or different from the rate of the old contract. Newman told them the rate for employees with a year's seniority would be $4.10 plus a 10-percent incentive.

This testimony is similar to that of Sanders in regard to complaint paragraph 30 above and for the same reasons as expressed for its dismissal, I will dismiss complaint paragraph 32.

14. Pat Gentry testified that around November 17 while in the lunchroom, he had a conversatibn with Plant Superintendent Brannun and Director of Marketing Miller. Brannun wanted employees to stay and work overtime, he threatened to fire them if they did not do so, and they were arguing back and forth. The question of the strike was brought up and, according to Gentry, Miller said he would pack up and go to Florida.

Complaint paragraph 25 states that Miller threatened employees on or about November 17 by coercively stating Respondent's intention to close the plant and go to Florida in order to discourage employees from engaging in a strike.

Assuming that Gentry's testimony is meant to substantiate complaint paragraph 25, it does not do so since no threat was made and, according to the transcript, nothing was said about closing the plant. Miller's saying that he would pack up and go to Florida appears nothing more than a statement of what he would do if the plant was struck.

I conclude and find that complaint paragraph 25 is not substantiated by evidence and I will dismiss it.

15. Gwen Mihuc began her employment with Respondent in October 1976. She testified that, while working in the final finish department on November 19, Foreman Lascelles told her that Steve Miller would be acting supervisor that day. She testified that later Miller said the Union was not any good, that the employees should quit it and start their own union because it was costing them money. She testified he said they were going to close the plant down and he and Newman were going to Florida and buy a condominium. Further, she stated Miller said there would be all new people working there in March and none of the people presently working would be there and Respondent had enough people to build trailers without them.

During cross-examination Mihuc said she knew Miller, thought he was the head salesman, and had seen him inspecting trailers and doing some minor repair work. She stated Miller was perfectly serious in his conversation with her and that Miller started the conversation.

Lascelles denied telling Mihuc or anyone else that Miller was to be their foreman for a day. Lascelles stated that on November 19 some of the employees had come to work and then punched out early and he was shorthanded since Respondent was attempting to get as many trailers completed prior to the strike as it could. He asked Miller to stay in the finish department to make

sure that things got done right and he told those in final finish to do what Miller wanted to get the coaches properly prepared so they could get them out; but he stated he did not tell the employees that Miller was their acting supervisor.

It would appear, from what Lascelles admitted he told the employees, that some of them may have assumed Miller was their acting supervisor for that day. Whether he was or not, there is no question but that Miller is a supervisor, as Respondent admitted, although he may not have had direct supervision over unit employees. Nevertheless, he is an agent for and speaks for the Company.

Miller recalled a discussion he had at or about that time with employee Vicki Kreischer when Gwen Mihuc and several others were present. Kreischer said there were a lot of rumors going around concerning what might happen and she wanted to work but was afraid to do so, she was going to stay home when the strike started. As to whether anything was said about Florida, Miller said he and Newman had a standing joke about going to Florida and getting a condominium for the wintertime. He said they all laughed about it, including Mihuc. Miller said Mihuc left shortly after that, saying she had a headache and there was a lot of pressure on her.

Respondent, in examining its witnesses accused of violations of Section 8(a)(1), in any number of instances drew direct denials of such testimony from them, in addition to their versions of the conversation. There is no denial from Miller of the direct statements Mihuc attributed to him concerning the Union being no good and that employees should quit it and form their own union because it was costing them money. Accordingly, I find that Mihuc's testimony is undenied and I have no reason not to credit her.

Accordingly, I conclude and find that the allegations of complaint paragraph 29, in regard to unlawfully encouraging an employee to refrain from engaging in a protected strike and from supporting or giving assistance to the Union for the purpose of undermining the Union and dissipating its majority status, and complaint paragraph 37, alleging an attempt to undermine the Union by telling an employee to resign from the Union to form a separate union since it was no good and cost money, are substantiated by Mihuc's testimony. The testimony dealing with the statement about going to Florida and closing the plant during the strike do not come within the ambit of a direct threat according to the bulk of the testimony regarding this statement. Accordingly, I do not find that such a threat was made but, rather, that the words were not meant seriously.

16. Complaint paragraph 31 alleges that Newman on two occasions engaged in direct negotiations with and coerced an employee, informing him that Respondent would pay the requested wage rate, despite the fact that it had been unwilling to pay the rate, if the employee would assist Respondent in undermining the Union and dissipating its majority status.

Presumably this allegation is meant to be substantiated by the testimony of Nile Eddy. As stated above, Eddy went to Newman's office and asked why Respondent could not pay the amount the Union was requesting. Newman replied that a number of people in the plant were not doing their jobs and were lazy and he could not afford to pay people like that if they were going to stand around and do nothing. Eddy testified he said, "Why can't we get rid of those people?" He said Newman replied that, if they could get rid of the people that did not want to work, he could afford to pay a halfway decent wage. Eddy said he told Newman that Newman could weed out and get rid of the people that did not want to work and then Newman could afford the pay raise. Questioned closer by the General Counsel concerning this statement, Eddy said that Newman said, "Well, if we weeded out the bad guys, maybe I would pay the money, if we got the guys that didn't want to work."

The testimony does not substantiate the allegations of the complaint. Apparently, the General Counsel felt that "bad guys" referred to union members, but it is clear that the reference was to employees that Newman felt were not working. Eddy, at that time, was still a union member and a member of the negotiating team. The complaint allegation appears to assert that Newman was attempting to enlist Eddy's aid to somehow help him get rid of union employees and, if successful in dislodging the Union, Newman would pay a $5 base rate. Eddy's testimony will not substantiate such a tortuous reading. The testimony appears to be a discussion between Eddy, a person interested in getting the Union's position across to Respondent that the employees wanted $5, and a response by Newman that he could not afford a base rate of $5 to employees who were not interested in working. The thrust of the conversation is not that Eddy would somehow get rid of the people or the Union, but that Newman should get rid of inefficient or lazy employees. Complaint paragraph 31 is dismissed since I conclude and find that it is not substantiated by any testimony.

17. Complaint paragraph 35(c) alleges that on November 18 Newman engaged in surveillance of union activities at an employee's home in Edgerton, Ohio. Phyllis Hicks testified that an impromptu union meeting of 10 or less employees was held at her home that evening following Holibaugh's discharge. During the time the employees were at her home, she saw a red and white Lincoln Continental driving past her house; she testified that the only person she knows who owns such a vehicle is Newman. However, she could not see or identify the driver of the car nor the license plates of the vehicle. Later, as she was preparing for bed following the union meeting, she saw the car drive past her house again.

Newman testified that he was nowhere near Hicks' house that evening, that he had not known of any union meeting, and that he was home the entire evening because his family gave him a surprise birthday party. Newman said he had a friend who lives in the same community as Hicks, but denied that he had visited the friend that evening.

This allegation must be dismissed since, even crediting Hicks, there is no identification of person or vehicle but only of a red and white Continental. There is not even proof that there are no similar cars in the area.

Accordingly, I dismiss complaint paragraph 35(c).

18. Complaint paragraph 35(b) alleges that Newman attempted to seek assistance of employees in undermining the Union and dissipating the Union's majority status by telling them to resign from the Union.

Employee Paxton testified he asked Newman about union fines, saying he had heard that the Union would fine members $500 if they worked during the strike. Newman replied that the Union could not fine members who resigned from the Union and then worked during the strike.

Belknap testified that Newman told him to withdraw from the Union, but I do not credit this testimony since it is the only testimony attributing such a statement to Newman and, on the credibility resolutions regarding Belknap, I would not credit such testimony. Further, Newman denied doing so.

Newman admitted telling employees who asked him that they could escape from being fined by the Union if they resigned from the Union before working during a strike. He attributed this knowledge to his attorney's advice.

The testimony demonstrates that employees sought assistance from Newman in regard to the subject of fines and he answered their queries by telling them the Union could not fine them if they resigned from the Union prior to working during a strike.

I do not find these statements to be coercive, but merely a response to employees who were concerned about a fine if they did work. While the employer may have been happy to give advice which encompassed resignations from the Union, his answers, based on his counsel's advice, to questions by employees how they could work during the strike without being fined by the Union, are not violative of Section 8(a)(1) of the Act, and accordingly I dismiss complaint paragraph 35(b).

19. Complaint paragraph 35(a) alleges that Newman attempted to undermine and dissipate the Union's majority by suggesting to the employees that a separate union be formed.

Sanders testified that during their conversation Newman said the employees could form their own union. Similarly, Paxton testified that, in his conversation on November 19, Newman said the employees could start their own union and have their representative in the plant.

Newman testified that during the week prior to the strike a number of people talked to him about union membership and fines, saying that they were afraid to work during the strike because Holibaugh was telling them they would be fined $500. He told them, according to his counsel, they could not be fined if they were not members of the Union and that a number of employees spoke to him about resigning from the Union. While denying any conversation with Belknap about withdrawing or resigning from the Union, Newman did not directly deny this testimony of Sanders and Paxton. Newman was asked to deny quite a number of statements attributed to him and he did so on a number of other occasions.

In this instance, I credit the testimony of Sanders and Paxton, who appeared to be, if not completely neutral witnesses, at least favoring the Company to some degree. They were employees of long standing with the Company who had resigned from the Union to work during the strike. Their testimony appears to go against the Company in this instance, and I credit it; I conclude and find that Newman suggested, at least to Sanders and Paxton, that the employees could start their own union in the plant after they had resigned from Respondent and that such statements violated Section 8(a)(1) of the Act.

In view of my finding *infra* that Respondent violated the Act by not continuing to recognize the Union, it is clear that Respondent was not free to do so and certainly was not free to encourage employees to start their own union, since Respondent had a duty to recognize the Charging Party and continue to negotiate and deal with it.

C. *Background of Holibaugh's Termination*

Holibaugh started with the Company on May 12, 1976. He stated that his job was to unload trucks and supply parts to the various departments as needed, and that he had been told by the person who had the job before him and showed him what to do that was all the job required. He stated that prior to the commencement of negotiations he would unload trucks, empty wastebaskets, and put out materials, and that he had volunteered to clean the lunchroom but he very seldom moved trailers.

Holibaugh became a union member and participated in the August 25 election of officers; he was chosen vice president and a member of the negotiating team. When the president of the Union resigned in mid-October, Holibaugh became president of the Local.

Holibaugh testified that, after he became a union officer, he was told that his duties also included cleaning the lunchroom and the men's room, cleaning up the yard and moving trailers, and cleaning wastebaskets in the sales department twice a day. The thrust of Holibaugh's testimony was that these duties were added to his ordinary duties following his becoming a union officer and concurrent with a change in attitude towards him by Supervisor Lascelles. He said that prior to that time Lascelles was friendly, but afterwards Lascelles' attitude became extremely hard towards him, particularly after he filed grievances against Lascelles. The first grievance he filed was for failure by Respondent to pay him holiday pay (apparently for Labor Day). His grievance alleged that he had worked the 8 hours before the holiday and 8 hours the following workday, but Holibaugh admitted he was late the day following the holiday and felt the withholding of holiday pay was erroneous. He agreed that, when this grievance was presented, Lascelles told him to put it in, that he might win it.

Holibaugh testified that, he prepared two grievances on the evening of October 20 and presented them to Lascelles the following morning. One of the grievances alleged that the Company was in violation of the contract by not posting job vacancies. The second grievance was a strong attack on Lascelles which alleged that Lascelles engaged in "total and unnecessary harassment to employees, *continuous badgering* to work faster and harder, threatening to fire employees it caught out of department witch [sic] is depriving employees of bathroom rites [sic], threatening employees to work over 8 hours or they will

be fired. '*Fits of anger*' unbecoming of a plant manager that suggest physical violence to employees."

Holibaugh testified that Lascelles read the grievance and replied that he was going to give Holibaugh a warning. Holibaugh stated that one good turn deserved another, and Lascelles gave him a warning for not staying and unloading a truck. Holibaugh said he explained to Lascelles that he had washed and punched out, and was in his car getting ready to leave when the truck came in and nobody asked him to stay. Lascelles said that he should have come back, punched in, and unloaded the truck.

Holibaugh acknowledged receiving another warning for not staying and unloading a truck, saying he had told Lascelles the day before that he could not work overtime because he had to pick up his wife.

Respondent adduced testimony from employee Piper that he had held the job Holibaugh performed, prior to the time that the individual who trained Holibaugh was employed, and such person remained on the job a very short time. Piper testified that the normal duties of the job included working the towmotor, stocking the plant, unloading trucks, keeping the yard picked up, moving trailers, emptying wastebaskets, and cleaning bathrooms and the lunchroom.

Holibaugh admitted that, when he received a raise in July, Lascelles said he expected a lot more from him and that he would be moving trailers off the end of the line. He said he told Lascelles he did not have enough time to do everything and Lascelles responded that he was sure Holibaugh would find the time.

When pressed on cross-examination as to when his relationship with Lascelles started to deteriorate, Holibaugh said that negotiations started around October 7 and by October 21, when he got that warning, the relationship had certainly changed. Asked if he recalled receiving warnings prior to that time, Holibaugh said he did not recall receiving a written warning from Lascelles on August 27 for missing too much work but acknowledged his signature when shown the warning slip. Asked if he remembered another warning for missing too much work dated September 8, he said he did not recall receiving such from Lascelles. When shown the document, Holibaugh noted that there was no signature or union approval on it and said he did not recollect seeing it. He was asked if he had refused to sign any written warnings and replied that he had; he acknowledged that there would be no signature with a refusal, but he did not recall whether he refused to sign the document.

Holibaugh said he probably disagreed with all the warnings Lascelles gave and added that no excuse was good enough for Lascelles. When questioned as to whether he missed work during those periods, he replied that he had no idea. He was asked concerning other dates on which he allegedly missed work or was late; he did not recollect any but said that there were a few mornings when he was late, and he did not remember when they were.

In regard to working overtime to unload trucks, Holibaugh acknowledged that some trucks came from Indiana and, because of the time difference, did not arrive until late. He stated that sometimes he stayed overtime and sometimes he did not, that it depended on the plans he had, but said he never stated he refused to stay. Holibaugh said that if he had an important appointment or had to pick up his wife he would tell that to Lascelles, but added again that no excuse was ever good enough for Lascelles. Asked if he refused to stay on October 20, he said he did not refuse, but his testimony is unclear as to the reason he did not stay to unload a late truck on that date. The October 21 warning slip states that "the employee refused to work over and stated that he will not work any time past 4 p.m. There are times when overtime is required." There is a purported signature of Niles Eddy and a written statement "but do not go along with it." Another warning slip dated October 29 signed by Lascelles has as its complaint: "Left when he knew truck was here to be unloaded. This must be stopped." There is a notation that Holibaugh refused to sign it.

There is agreement that during the negotiations the Union was attempting to secure the elimination of or restrictions on mandatory overtime. Holibaugh stated that after he became union president he proposed to the Company both inside and outside of negotiations that overtime should not be worked to get trailers completed. He admitted discussing this with other employees, stating that it was his opinion that a person did not have to stay and work 14 or 15 hours a day and have no life of his own. Asked if he had ever had to work 15 hours a day, he sidestepped the question by saying he would not do so. Asked if in the week before the strike he discussed not working any overtime with the employees, Holibaugh said a number of employees, including Schooley, Blankenship, and others, asked if they had to work overtime and he said they could use their own discretion. Asked if he had told Lascelles that the employees did not have to work overtime, he first said he might have done so; he then said he suggested it to Lascelles but Lascelles said that they had to work overtime when it was needed. He said there was one occasion when he told a group of employees in the lunchroom they could use their own discretion, and the employees decided not to work overtime.

Holibaugh was questioned about his second warning for not staying overtime to unload a truck (October 29) and was asked if he had not demanded of Lascelles that he be given a 3-day layoff, as this was his third warning in a 90-day period. He said he did not do so in those terms but he did ask whether Lascelles was going to suspend him for 3 days like he did everybody else on a third warning. He did not recall whether Lascelles said the warning was for corrective purposes rather than for punishment.

This acknowledgment by Holibaugh of one of the two overtime warnings as a third warning in a 90-day period is a contradiction of Holibaugh's testimony that he did not recall the previous warnings for missing too much work in September and August. For this warning to have been his third, one of those prior warnings would have had to be included in the 90-day period.

Asked whether he complained to anybody else that he had not received a 3-day suspension, he answered that he did not recall. He denied saying that he would take the

plant out if Respondent gave him a 3-day suspension. When questioned as to whether he complained to Plant Superintendent Brannun that Lascelles had not given him a 3-day suspension, he denied that, but did not deny talking to Lascelles about the suspension and stated that he might have done so.

Holibaugh was also asked about the Respondent's incentive pay system and replied that there was no incentive pay, there was only partiality and discrimination.

Ron Lascelles testified that the job for which Holibaugh was hired included receiving material, putting it away, keeping the yard in orderly fashion, supplying materials to the lines, emptying wastebaskets, cleaning the lunchroom and other rooms, and removing coaches from the line. Lascelles testified that Piper had held that job, and, for a period of some 4 to 6 weeks, a short-time employee held it between Piper's and Holibaugh's tenure. Lascelles testified that he talked to Holibaugh about Holibaugh's attendance problems, emphasizing that it was a small company and they did not have a lot of cross-training and everybody was needed to show up on time.

Lascelles also said he had discussions with Holibaugh concerning the need for employees to work overtime until the trailers were done and moved out of the plant. He told Holibaugh that materials come in from all over the country and there was no way for the truckdrivers to schedule themselves to be there precisely during worktime; sometimes it was required that a person stay late to do the unloading. Holibaugh said he did not want to work overtime and that 1 or 2 weeks before the strike, Holibaugh said he was not going to work overtime any more, that his wife worked elsewhere, they had only one car, and he had to pick her up. Lascelles told Holibaugh that did not fit with the Company's rules and there were occasions when overtime had to be worked. Holibaugh replied that Lascelles could not require him to work overtime.

In regard to October 21, Lascelles said he prepared the warning slip and gave it to Holibaugh before Holibaugh gave him the two grievances. When he gave Holibaugh the October 29 warning concerning not working overtime, Holibaugh said this was his third warning; he asked if Lascelles was going to give him a 3-day suspension and added that, if Lascelles did, he would take the shop out with him. Lascelles said no, that it was a warning, not a discipline, and he wanted to make sure Holibaugh understood what the Company wanted from him, that they did not want to chase him off or cause problems, and therefore he was not giving him a suspension. Lascelles testified that Holibaugh argued he was supposed to receive a suspension and, after saying several times that he was not going to suspend him, Holibaugh said he would see about it and went to Brannun. Lascelles followed, and Holibaugh told Brannun that he had received three written warnings and was supposed to have 3 days off, that Lascelles had given him the third warning and did not suspend him and he wanted Brannun to override Lascelles. Brannun refused to do so.

Lascelles testified that Holibaugh's work got progressively worse and that, when he would talk to Holibaugh about improving, Holibaugh would look at him and smile and say he was doing his best and that he interpreted this behavior as an attempt to needle him. Lascelles noted that during the week prior to the strike production slowed down, material was not being delivered to the areas, and he saw Holibaugh around the shop talking to people, not doing his work.

D. *Holibaugh's Termination on November 18*

Holibaugh acknowledged that on November 18 he was late to work but said others were late as well; he was the only one who received a warning. He did not testify as to whether the others had the same history of problems he had with lateness and absenteeism. He stated that during that day he was ordered over the loudspeaker system to go move trailers off the line so he got the tractor, went to the end of the line, and spotted them in the yard. Thereafter he went back to his towmotor and found that Newman was using it loading cabinets. Newman asked where he had been, and he replied that Newman ought to ask Lascelles, that he had been moving trailers off the line. Lascelles was present and said that Newman should have seen Holibaugh driving, that he did not think Holibaugh could drive any slower. Holibaugh asked if they wanted him to tear the trailers up, and Newman told him that they were not going to take any more—off of him. Holibaugh asked, "Why don't you go ahead and do it?" Newman said he was acting in a smart-aleck manner. Holibaugh said, "Why don't you go ahead and fire me, that's what you're up to anyhow." Lascelles said that they were not going to take any more—off of him, and Holibaugh replied that he did his job. Newman commented that, if he did his job, why was it that several departments needed one-by-four's and one-by-two's. Holibaugh replied it was because they were not in stock.

Holibaugh said that following this, around noontime, Brannun said he was not supposed to be talking about union activities all over the plant. Holibaugh asked if they thought he was a robot, that if somebody talked to him he would reply.

Around 3:40 p.m. while Holibaugh was moving a trailer off the end of the line, Lascelles got on the tractor with him. After he had positioned it in the yard, Lascelles said he thought Holibaugh was harassing him, that Holibaugh had a smart attitude and he thought Holibaugh had just better go home. Holibaugh asked if that meant he was fired, and Lascelles said it did. He punched out and left. Holibaugh complained that he was being paged for jobs all over the plant that day and felt he was being harassed.

Newman testified that on November 18, not finding Holibaugh around, he used the forklift to move some cabinets which were needed. When Holibaugh got back, he told Lascelles and Holibaugh that it was Lascelles' obligation to get Holibaugh straightened out. He told Holibaugh that they had taken all they were going to take, and Holibaugh smiled in reply.

Lascelles said that one-by-four's are the main item they use and while occasionally they might be out of some particular length of one-by-four's, the Company would never be out of them entirely.

Lascelles testified that Holibaugh perceptibly slowed down on the job. On November 18, he paged Holibaugh over the intercom to come to move two coaches. After waiting for some time, he walked to the final finishing department, found Holibaugh and asked him to get his tractor and go to the end of the line and move two coaches. He returned to the end of the line and after waiting for a while, again went back to the final finishing department and told Holibaugh he was waiting for him to move. Holibaugh said he was coming. Lascelles walked back to the end of the line and arrived before Holibaugh showed up driving the tractor. He said he helped Holibaugh back up and hook up to the trailer and watched him move it into the yard. He testified that Holibaugh was moving as slow as it is possible to move and that it took forever for Holibaugh to move the trailer out and park it. When Holibaugh came back, he decided to talk with him about it and again helped him hook up. Lascelles rode on the back of the tractor and asked Holibaugh why the job was not getting done and why he was so slow. He said Holibaugh spoke about the strike and said that Lascelles had better watch out when the strike started because the big boys from the flooring department were going to bust some heads. He asked Holibaugh if that was a threat, and Holibaugh responded by asking, "Did I threaten you?" and saying no, it was not a threat. He told Holibaugh he wanted him to get the work done so the line could move, and Holibaugh replied that he was not going to "bust his fanny" and smiled at him. He told Holibaugh that he might as well go home because he had to get the job done and had to have someone who was going to do it. Holibaugh smiled, said thank you, and left.

In regard to the statement about the boys from flooring, Holibaugh said he did tell Lascelles they had some pretty big boys in the flooring department and, when Lascelles asked what he meant by that, he replied he was just making conversation.

While Holibaugh denied that he had ever refused to work overtime, it appears from his statements that, although he might not have used those words, such was the clear import of what he said.

Respondent also accused Holibaugh of asking employees to slow down in their work during the week before the strike. Holibaugh denied making such statements. Employee Paxton stated that, 1 to 3 days before the strike, Holibaugh told him not to build up the plumbing material ahead of time but to use up what they had built up so that when the strike started the Company would have to build it, and to slow down his work. Paxton also testified that he overheard a conversation between Holibaugh and Lascelles about 3 days prior to the strike in which Holibaugh said it was not his job to unload a trailer and he was not going to do it. Holibaugh denied making that statement.

E. *Conclusions as to Holibaugh's Termination*

If we consider Holibaugh's testimony and that of a few of the General Counsel's witnesses, it would appear that a *prima facie* case is made out for Holibaugh in that he asserts he began to be harassed by Lascelles at the time he became a union officer and that the harassment continued and increased. His testimonial description of the discharge and the events leading up to it would show that he was being continually harassed throughout that day by Lascelles, that he was trying to do his job and was terminated by Respondent without just cause to punish him for his union leadership. There is testimony that following his discharge some seven to eight employees gathered at Phyllis Hicks' house and talked about going out on strike early to protest Holibaugh's discharge but were dissuaded from doing so by Union Representative Campbell.

Overbalancing this picture is that which evolves from Respondent's testimony, some admissions from Holibaugh, and the warnings. The evidence is clear that Holibaugh had some problems with attendance and lateness and had been warned concerning them; from Holibaugh's admission, it appears that those warnings preceded the asserted change in attitude towards him by Lascelles.

Holibaugh admitted that he saw a truck come in as he was preparing to leave on the evening of October 20 and that, despite knowing he was the person charged with unloading the truck and what Respondent's policy was towards overtime, he did not respond to that policy but left the premises. This occurred shortly after he became union president and, according to his own testimony, attempted to negotiate with Respondent some restrictions on mandatory overtime, in essence acknowledging that overtime was mandatory for employees. The reasons Holibaugh gave for not working overtime amounted to a refusal to do so despite Respondent's necessity to unload trucks that came to its premises.

I credit Lascelles where there is a conflict between Holibaugh and Lascelles, finding that Holibaugh had a heavy bias against the Company and Lascelles, as demonstrated by Holibaugh's testimony, and that there were some contradictions in his testimony. The details of conversation are glossed over to an extent by Holibaugh whereas Lascelles' testimony is more precise and seems to indicate a finer retention of what occurred.

Basically, Respondent agrees that Holibaugh's name was called a large number of times over the intercom on the day he was discharged but it was not because Respondent was harassing Holibaugh, but rather because Holibaugh was not doing the jobs he was supposed to do, and it was necessary to call him a number of times to try to get him to do those jobs. Lascelles' testimony regarding Holibaugh's delays in responding to his instruction to come to the end of the line and move trailers appears to emphasize that point.

If Respondent sought to punish Holibaugh for his union officership and activities, it could have done so by suspending him on October 29 when it had the opportunity and Holibaugh appeared to be insisting on it. In fact, looking at the number of written warnings Holibaugh had received within a 90-day period, the warning of October 21 was the third warning within a 90-day period and the warning of October 29 was the fourth. Presumably, under such circumstances, Respondent could have suspended Holibaugh on October 21 and possibly have terminated him on October 29. However, as Lascelles

explained, he wanted Holibaugh to acknowledge the Company's policy on overtime and to observe it and gave him the warning for that purpose and not to punish him or attempt to get rid of him.

If Respondent wanted to rid itself of Holibaugh on the basis that he was refusing to work overtime and in effect seeking to dictate to Respondent what his hours of employment would be, it apparently could have done so and the Board, on the basis of *F. W. Woolworth Company*, 204 NLRB 396 (1973), would have found that to be good cause. But Respondent sought to have Holibaugh accede to its wishes concerning overtime and did not suspend or discharge him then.

I credit Lascelles that Holibaugh's activities during the final week, where he appeared to be engaged in and to encourage others to engage in a slowdown of work, added to his refusals to work overtime, created a situation where Holibaugh was not amenable to what was demanded of him in his job, and I find that the discharge was for good cause and that it overbalances any *prima facie* case of discrimination. Accordingly, I will dismiss complaint paragraph 38.

F. *The Unfair Labor Practice Strike Allegation*

There is agreement, noted above, that the employees engaged in a strike from November 20 until December 1. Complaint paragraph 10(b) alleges that this strike was caused and prolonged by Respondent's unfair labor practices, and the General Counsel asserts that the discharge of Holibaugh was one of the reasons for the strike and, urging that Holibaugh's discharge violated Section 8(a)(1) and (3), claims that the strike was an unfair labor practice strike giving participants therein rights to reinstatement, which are more particularly alleged in complaint paragraph 39.

Counsel's position is undercut by my finding that Holibaugh was not discharged in violation of the Act. Even if I had found that Respondent had violated the Act in terminating Holibaugh, I would still not find that the strike was an unfair labor practice strike.

There is no dispute that on Sunday, November 14, the employees by an overwhelming vote agreed to strike after refusing to accept Respondent's contract offer. It is clear from the testimony that during most of the following week the employees sought to convince Newman that Respondent should pay the $5 per hour amount which the Union was seeking in these negotiations, and Newman responded that he could not do so. It is clear from the testimony that an impasse had developed concerning rates of pay.

During the week prior to the strike, a second meeting was held at an employee's house and another strike vote taken; again the results were overwhelming in favor of striking. On Thursday, November 18, Eddy, who had become convinced that the employees should not strike, sought another strike vote in the lunchroom, and it is clear that the strike again was supported by a great majority of those present. All of these events occurred prior to the Holibaugh termination.

As noted above, on the evening of November 18 an impromptu meeting was held at Phyllis Hicks' house with eight or nine employees present where sentiment was expressed about going out on strike prior to the strike date because of Holibaugh's termination. Union Representative Campbell told the employees that they must wait until the strike date according to the terms of the contract.

On November 19, a number of employees stayed off from work or came into work and left early, claiming that they were sick, but the purpose of such actions was not demonstrated.

No mention was made of an unfair labor practice origin of the strike on the picket signs and no claim was made to Respondent prior to, during, or after the strike that the strike had been caused at least in part by Holibaugh's termination or any other unfair labor practices, until this case.

The strike lasted from November 20 until December 1, and there is nothing in this record to indicate that the strike was prolonged in any manner by anything that Respondent did or did not do, and such prolongation is only a presumption by the General Counsel with nothing to substantiate it. The 8(a)(1) violations found above were not considered by the strike participants, and I conclude that it was an economic strike.

Accordingly, I find that the strike was not an unfair labor practice strike and that employees who struck are not entitled to reinstatement on that basis as alleged in complaint paragraph 39. I dismiss complaint paragraph 10(b) and that part of complaint paragraph 39 which asserts reinstatement rights based on an unfair labor practice strike. See *Romo Paper Products Corp.*, 208 NLRB 644 (1974).

G. *The Pay Raise Allegation*

Complaint paragraphs 40 and 41 assert that Respondent violated Section 8(a)(5) and (1) of the Act by not notifying and bargaining with the Union in regard to the pay raise and bonus rate it paid employees on or after November 22.

Having previously found that the parties were at an impasse concerning pay rates prior to the strike and that Respondent was therefore free to pay employees who worked during and after the strike rates it had offered to the Union, together with Union Representative Campbell's testimony that the bonus rate alleged as violative in complaint paragraph 41 was less than the amount the Company had proposed in its contract offer, it follows that these two allegations are without foundation and, accordingly, I dismiss them.

H. *The General Refusal-To-Bargain Allegation and Respondent's Refusal To Further Recognize the Union*

Complaint paragraph 45 alleges that all of Respondent's conduct, as set forth in the complaint from paragraph 12 on demonstrated course of conduct, bad-faith bargaining by Respondent with the objective of the avoidance of meaningful negotiations with the Union and avoidance of a contract with the Union, the discouragement of employees from engaging in union or protected activities for the purposes of collective bargaining.

With the exception of complaint paragraphs 29, 35(a), and 37 wherein I have found violations, and with the

further exception of complaint paragraph 44 where I do find a violation, the remaining unfair labor practice allegations of this complaint have been dismissed.

The General Counsel has not demonstrated any egregious unfair labor practices concurrent with the negotiations which ceased on November 12 which would substantiate the course of conduct, bad-faith bargaining allegations in complaint paragraph 45. Nor has the General Counsel produced any evidence concerning Respondent's conduct during the negotiations, such as reneging on agreements, surface bargaining, etc., which would support his allegations. In short, there is nothing through the time of the strike which would show other than that Respondent engaged in good-faith bargaining with the intention of reaching an agreement.

Therefore, I cannot find that Respondent engaged in course of conduct, bad-faith bargaining. It appears that any violation of Respondent in its duty to bargain with the Union occurred following the strike, and not during the negotiations prior to the strike.

I do find that Respondent had a duty to recognize and bargain with the Union during and after the strike and that the reasons advanced by President Newman in his testimony, and by Respondent in its brief, for terminating its negotiations with the Union and refusing to recognize it as its employees' bargaining agent on and after December 1, 1976, were insufficient and that, by such termination and refusal to recognize, Respondent violated Section 8(a)(5) and (1) of the Act.

President Newman testified that he got a letter from the Union around December 10 and, at that time, did not believe he had an obligation to continue to bargain with the Union. He based his decision on the following: (1) The Union went out on strike and terminated its contract and they did not have a contract at the time of the hearing; and (2) the strike started out with a few people (meaning pickets) which did not represent 50 percent of the work force and dwindled every day during the strike. He said "Those people came back to work before the strike was over." Asked who did, he named Norma Crow and said several others did. He also testified that a further reason was that he had received a list of employees who had resigned from the Union. The list to which he referred is the lists of 13 employees on the document prepared by employee Piper. The General Counsel urged that two of these people later joined and supported the strike. These are all the reasons given by Newman as to why he felt he had no obligation to bargain further with the Union.

Respondent's brief lists 13 reasons which Respondent asserts warranted it in refusing to bargain further with the Union. Those reasons are as follows:

1. The Union was *voluntarily* recognized in February 1972.
2. It did not achieve a collective-bargaining agreement with Respondent until November 1973.
3. The collective-bargaining agreement contained a union shop clause providing for mandatory union membership and a dues checkoff provision but no authorizations for dues checkoff were provided to Respondent until June 1975.
4. There was insufficient interest by the employees in the Union to support the establishment of their own local union until the summer of 1976.
5. Less than a majority of the employees, on the average, attended the union meetings in 1976 during which the local union was established.
6. Union officers had to be appointed, rather than elected, because of such lack of interest.
7. Four of the seven local union officers resigned from the Union during negotiations or before the strike.
8. Thirteen employees, including three of these four officers, executed a written union resignation and gave MHE's president a copy.
9. Thirteen or fourteen bargaining union members worked during the strike.
10. The strike lasted only 7 workdays and only 10 to 12 employees attended the union meeting terminating the strike.
11. The Company had no meetings with and made no concessions to the Union during the strike to warrant its termination.
12. Only 14 of more than 40 employees had more than 6 months of service with the Company in November 1976, and almost all of them worked during the strike.
13. Respondent's work force historically experiences high turnover and fluctuates widely in number.

The first six reasons advanced by Respondent have to do with the manner in which the Union was first recognized and what occurred on various dates between 1973 and the summer of 1976; although providing some background, they really have nothing to do with the majority status of the Union in 1976. It is true that under the contract provisions employees were to obtain union membership on or after 30 days' employment and to maintain it; that dues deductions were authorized by the employees and the amounts were paid by Respondent to the Union. However, granting that, these first six reasons are not relevant to the question before us.

It appears from the testimony that the president of the Local resigned from the Union during negotiations and apparently left the Company to go into business for himself. There is no allegation that he continued with the Company and his name does not appear on the Company's records. Other officers or members of the negotiating committee resigned from the Union prior to the strike.

On the document prepared by Piper there are 13 signatures. One or two of the employees indicated that they later withdrew these resignations and did not work during the strike, and there may have been several other people who were members of the Union who went in and worked during part of the strike. There is no dispute, as paragraph 10 in Respondent's brief, quoted above, alleges, that the strike lasted only 7 workdays and that the meeting held to terminate the strike was attended by 10 to 12 members.

Paragraph 11 of Respondent's brief, as set forth above, states that the Company held no meetings with and made

no concessions to, the Union during the strike to warrant its termination, which only means that the Union did not win the strike but voted to terminate it for the members' own reasons, not because of any concessions made by Respondent. This does no more than tell us that the impasse which started the strike was still extant at the close of the strike.

Respondent's paragraph 12, as set forth above, alleges that of the 40 employees who were union members and had dues deductions during the month of November only 14 of that number had more than 6 months' seniority with Respondent. It appears to be a fact that most of that group worked during the strike, with the notable exception of Phyllis Hicks.

Respondent's last reason is, *supra*, that its work force historically experiences high turnover and fluctuates widely in number.

All of these reasons, taken singularly or considered together, do not overturn the fact that, in the formal strike vote taken prior to the strike by the Union, the members voted to strike by 28-to-2, with 2 voids or abstentions. The margin was nearly the same in the two other votes which took place on November 17 and 18, with more than a majority of the employees then employed voting to strike.

Even if we were to grant that the 13 resignations were all authentic and continued in force, despite testimony to the contrary on two of them, it would still be mathematically clear that the Union represented a majority of the employees at the time of the strike. There is no evidence which credibly demonstrates a shift of employee sentiment to opposing the Union during or after the strike. The employees who did not resign from the Union must, under the present evidence, be presumed to have continued to support the Union during and after the strike.

In *Cantor Bros., Inc.*, 203 NLRB 774 (1973), Administrative Law Judge Taplitz noted some of the cases which seemed to be controlling in that case and in the present instance. He cited *Coca-Cola Bottling Works, Inc.*, 186 NLRB 1050 (1970), as standing for the proposition that an employer could not rely on the refusal of some employees to go on strike or the return of striking employees to work as a basis for company withdrawal of recognition from the union, since the Board would not presume that failure to support a strike or returning to work during a strike indicated a lack of support for the union. There are any number of reasons why employees would work during a strike even though they supported a union or abandoned the strike while it was still going on.

Here, Respondent seems to equate the number of pickets with the number of employees who support the strike. This is not a reasonable test. The number of pickets merely shows that those pickets are actively engaged in demonstrating their support for the Union. Others may support the Union but not actively demonstrate their support.

The Board has held in *Pennco, Inc.*, 250 NLRB 716 (1980), that strike replacements and new employees are not automatically counted as antiunion. Basically, the Board considers that replacements may support the union in the same proportion that employees did prior to the strike. The Board has stated that there is a heavy burden of proof on an employer since it will not presume the replacements do not support a strike. It stated that to do so would be to overburden the right to strike because, if that were the guide, then an employer could refuse to recognize the union any time there was a strike and replacements. See *Cavalier Division of Seeburg Corporation and Cavalier Corporation*, 192 NLRB 290 (1971).

Respondent may have presumed that, with the corps of senior employees it retained, most of whom did sign the document resigning from the Union, that it felt the less senior employees had no particular interest in the Company, and that it could refrain from negotiating with the Union based to some degree on the number of replacements and the new employees it would be bringing into the Company as it expanded.

However, if this was its hope, it is unavailing as a defense in this instance because under Board precepts Respondent has produced no credible evidence to demonstrate other than that the Union continued to represent a majority of Respondent's employees. On this basis, it is clear that Respondent violated Section 8(a)(5) and (1) of the Act when it refused on and after December 10, 1976, to recognize or negotiate with the Union as the collective-bargaining representative of the employees in Respondent's P and M unit, and I so conclude and find. The Union's request for further negotiations contained in its December 10 letter to Respondent was ignored and in essence was refused; the answer of Respondent's counsel on December 17 was nothing more than a palliative smokescreen.

I. *Requests for Information*

Respondent admits that it received the December 10 letter from the Union which, among other things, requested that Respondent furnish it with a list of all employees which would include their names, addresses, dates of hire, rates of pay, and the department in which they were working. Respondent admits that it failed and refused to provide the Union with such information and says the information was not relevant and necessary to enable the Union to perform its responsibilities as a bargaining representative because the Union no longer represented the employees. However, as noted above, I have found that Respondent's refusal to recognize and negotiate with the Union on the basis of its belief that the Union no longer represented a majority of the employees was ill-founded and, under Board law, was improper and violative of the Act. Since the Union did represent the unit of employees and this information was proper and necessary to its functioning as a collective-bargaining representative, particularly following the strike in this matter, I conclude and find that Respondent's refusal to furnish this information to the Union, as alleged in complaint paragraph 44, was an independent violation of Section 8(a)(5) and (1) of the Act.

J. *The Alleged Refusal Properly To Reinstate 12 Employees*

Parnell Smith, one of the 12 named in complaint paragraph 39, apparently did not cooperate in the investigation in this matter, and the General Counsel on the

record stated that Smith had failed to appear and agreed to dismiss him from the case. It would appear therefore that based on the transcript Smith should not be considered in this matter.

The remaining question is whether the *Laidlaw* rights of these 11 individuals were violated in any manner by Respondent's course of offering reinstatement to some and not others.

It is clear from the record that a number of employees who were active in the Union and in picketing, such as Phyllis Hicks, were reinstated immediately after the Union voted to discontinue the strike. This vote took place in the evening of December 1, and Union Representative Campbell requested the Union's director to inform Respondent of the cessation of the strike. In a letter to the Company dated December 1, the Union on behalf of all the striking employees made an unconditional application and offer to return to work and requested immediate reinstatement.

During the strike Respondent had employed employees from a sister corporation, had advertised for other employees, and had hired some people. Roger Simpson was hired during the strike on November 30 as a yardman, presumably to replace Holibaugh.

Respondent stated that it did not hire or recall many people between December and February since it had a few orders; it also had a trailer show in Kentucky and used a number of the people to prepare and set up its trailers for that show. Additionally, because of the strike, Respondent had refused some orders and cut down on some materials and stated it did not have enough orders for a full crew during those winter months. As mentioned, *supra*, Respondent builds it product solely on order and does not produce for its own inventory.

Respondent admitted it hired some people in the interim and gave its reasons why it hired them and why it did not recall some of the employees who had struck and had not yet been returned to work.

Respondent hired Greg Cantler on January 14, 1977, to work in partition II. It stated that Cantler had worked for the Company previously, was experienced, had left, gone to Florida, and returned, and there was no one else available on the list of people who had gone on strike who could do the job he filled.

Lascelles testified he hired Brenda Walter on January 14, 1977, to work in the metal department because there was no one else to fill the job; he made reference to manual dexterity needed for the job. Asked why he had not brought back either Woodall or Gentry who had worked on roofs, Lascelles testified that was a different type of job and they would not have been able to perform it.

Gary Simpson and Charles Sergent were hired on January 26, 1977, in partition I. Lascelles stated that there were no other people among those who had struck who were able to do the job.

Rita Blazekovitch was hired on February 3, 1977, in the trim department, and again Lascelles stated she was hired because no one else was available who could do that job.

Tom Raub was hired on February 15, 1977, and had worked for the Company previously. He had left several months before the strike and was hired by Respondent as a yardman and swingman since he was a versatile employee who could do a number of different jobs. These were all the persons who were hired before Respondent called back to work some of those listed in paragraph 39.

Asked whether some of the strikers could have been trained for some of these jobs, Lascelles said it would have taken as much training to retrain them from their previous work as it would be to put on new employees, that some of them would not have been as dexterous as the persons he hired and some of those he hired had previous experience with the Company. Most of the 11 had been with the Company only a short time prior to the strike.

Respondent further stated that whether a person had been on the picket line or did not work during the strike had nothing to do with its decision on whether to return that person to work. In regard to the 11 employees, we have the following testimony:

1. Charles Albertson was brought in by the Company during December and worked a half day. Albertson stated that prior to that time he had called the Company and was told he was in a layoff status and that Respondent had sufficient employees at that time. He said that following the half day in December he never heard anything from the Company so he got another job. In March 1977, he was called by the Company to return to work but did not respond since he had another job.

Albertson admitted that he had returned to Terry Industries in Edgerton in January 1977, had worked there for 2 years, and was laid off there when he went to work for Respondent in August 1976. He said he was making more money there than he had ever made at Respondent.

2. Lascelles testified that he called Robert Belknap to come back to work and Belknap said he would do so but did not show up.

On rebuttal, Belknap testified that he did not have any such conversation with Lascelles about returning to work and said that Lascelles was not a supervisor. This testimony of Belknap is incomprehensible, considering Belknap's prior testimony as to the supervisory status of Lascelles and as contrasted against the fact that Lascelles was a foreman who was recalling other employees. In any event, Newman called Belknap around February 6, asking him to return to work, and Belknap said he finally reported back to work around February 14.

3. Don Blankenship stated that he picketed and that following the strike he and employee Schooley talked to one of the secretaries in the office and were given layoff slips. Blankenship said he tried Respondent again in February and March and was told he was still on layoff; he was finally recalled on April 4, 1977.

Lascelles testified that he did not need Blankenship immediately after the strike but attempted to call him several times later and was not able to get him.

4. Schooley testified he called the Company and was told that he was out of a job; he implied that this was at the end of the strike and he did not corroborate Blankenship's testimony. He said he received an offer in Febru-

ary or March and talked to Foreman Lascelles; he did not like what Lascelles had to say and did not go back to work.

Lascelles stated that he was unable to reach Schooley the first few times he called but finally got him and asked him to come to the plant. He told Schooley that he needed him to work but wanted better attendance from Schooley than he had before. Schooley said he was healthy and would be in to work every day and would report the next morning. Schooley never showed up, and Lascelles said he never heard from him again.

5. John Carpenter was a probationary employee when the strike started. He lived some 20 to 25 miles from Bryan, Ohio. He did picket duty about three times but did not know when the strike ended; he did not learn that it had ended until some 2 to 3 weeks later. He said that, about a month after the strike ended, he went to the plant and was told there were no openings.

Lascelles testified that he discussed probationary employee Carpenter with Brannun, and they decided they should not bring Carpenter back to finish out his probationary period since Carpenter had poor attendance and was a sloppy worker and they did not believe he should be kept as an employee.

6. Dale Thomas was a probationary employee who did not testify in this case since apparently he was unavailable out of state. Lascelles testified that Thomas had worked in the ceiling-sidewall area and, when someone was needed in that department, he checked with the people in that department, since he was not familiar with Thomas, and asked them about Thomas' work. He testified that all the people in the department, including the leadman, said they did not want Thomas back, so he did not make any offer to Thomas to return to work but terminated him as a probationer.

7. Pat Gentry stated that early in the strike he called regarding a job and was told that the metal work was being done by the people that had been brought over from the sister company, Mini Mansions. He did not receive a call to return to work until February 16 when he was called by Lascelles, and he reported back on February 17.

8. William Kochenour was a probationary employee who stated that he began with Respondent on October 5. He said he signed the document prepared by Piper since he understood he could keep on working if he resigned from the Union but then did not work during the strike. He said he returned to work about 2 days after the strike was over, worked 2 days, and took a day off work to take his wife to the doctor. He said he called in and was told that he had been fired.

During cross-examination Kochenour stated that he did not know that the contract provided for a 45-working-day probationary period before a person acquired seniority; he had assumed he was over the probationary period when he joined the Union. He agreed that he went back to work around December 3 and, when asked whether he punched in 9 minutes late Thursday, said he did not punch in at all, that his card was not there and he did not recall punching out. Then he testified that he did not work that day. Later he testified that maybe he did punch in that day but he did not recall being 9 minutes late. Asked if he had taken his wife to the doctor on Thursday or Friday, he said he might have punched in 23 minutes late on another day. When asked if his record was that, after being recalled following the strike, he was late the first 2 days and missed the third day, he said that could have been the record but he did not recall it. He also admitted that he had been absent four times in his employment prior to the strike.

Lascelles stated that he had recalled Kochenour to work as a probationary employee because he hoped he would become a good worker. However, Kochenour was late twice and missed a third day and Respondent terminated his probationary employment at that time.

9. Mike Marvin testified that he was not on active picket duty during the strike and, during the strike, began to look for other employment. He said that after the strike he sought to go back to Respondent because he had not yet found a job. He said Respondent had an ad in the paper so he went to the plant and saw one of the secretaries and asked if he needed to fill out an application and she said his application was still current. Marvin said he saw another ad in the paper in April 1977, made an application then, and talked to Lascelles. Lascelles asked if he was working and he said he was, and Lascelles told him that he did not need part-time help and Marvin said he was looking for full-time employment. Lascelles said he did not think Marvin could handle it and they would not need him.

During cross-examination Marvin attempted to evade the question of whether on November 29 he had a discussion with anyone in the Company about quitting as an employee at Respondent. He answered the question by saying he quit active picket duty to go look for work. Asked again whether he spoke to the secretary, Mrs. Ellis, concerning quitting as an employee, he stated he called in and told her that he was not on picket duty any more and was looking for employment and needed to go to work. Asked if he told Ellis he was making an application at another Company and wanted Respondent's records to show him as a "quit," he evaded the question and stated that at that time he had not made an application to the other company. He testified that he was planning to make an application but that nobody knew it and, to his knowledge, he did not tell her of his plan. He denied asking Ellis to tell the other company he had quit at Respondent but stated that he started work at the other company in the first part of December and was still there, working on the third shift.

Ellis testified that Marvin asked her about getting a slip to show that he had quit so that he could get a job with the Arrow Corporation. Lascelles testified that he gave Marvin a quit slip when Marvin crossed the picket line into the plant and asked him for one.

In regard to credibility determinations here, I credit Ellis and Lascelles that Marvin asked both Ellis and Lascelles for a quit slip and procured one from Lascelles. There would be no reason for Marvin to make a call or come to the plant merely to tell someone at the plant that he was not on active picket duty and was seeking a job somewhere else. His April request of Lascelles for a job evidently was taken by Lascelles as an application

for a second full-time job, with Lascelles answering that he did not think Marvin could handle a second full-time job and they would not hire him.

10. Lascelles testified that on November 19, the day prior to the strike, he wanted some partitions built because the work was behind, and he spoke to Jeff Schilt and one other person who said they were going home. He asked them to stay and finish building the partition they were working on; Schilt said he would not do so, that he was going to quit because he could not afford to go on strike, he had to get another job and therefore was quitting. According to Lascelles, Schilt resigned at that time and left.

Schilt testified that he did not walk the picket line but stayed home during the strike and did not work. He said he did not receive any message from Respondent about returning to work and denied having any conversation with Lascelles about quitting. He lived about 24 miles from Respondent's plant and said he had not learned that the strike was over when he started work at General Tire on February 9, 1977.

I credit Lascelles that Schilt told him he was quitting. I do not see how Schilt could have had any interest in a job at Respondent or in returning to work there, living a mere 24 miles away and not making any effort to determine if the strike had ended before starting work for General Tire almost 2-1/2 months after the strike ended at Respondent. Schilt's actions were those of a person with no interest in Respondent, and I credit Lascelles that he quit.

11. Gary Woodall testified that he called Lascelles in March 1977 regarding a job and was told to come in. Lascelles offered him a job working in the ceiling department although Woodall had worked in the metal department prior to that time. Lascelles felt that Woodall could do the job. Woodall agreed to do it and went to work in the ceiling department in March.

On the basis of the transcript testimony and my credibility determinations, I have determined that employees Marvin and Schilt quit their jobs before the strike ended and that Respondent need not offer them any employment.

Probationer Kochenour was reinstated shortlv after the strike ended but was thereafter fired for apparent good cause, and I find that Respondent need make no further offer of employment to Kochenour.

Employees Woodall, Belknap, Gentry, and Blankenship were recalled from February on, in 1977. Respondent testified that it had no openings that they could fill prior to that time, and there is no countervailing evidence. I therefore find that Respondent owes no further or prior duty to these employees, and there is no proof that it should have recalled these individuals prior to the time it did.

Schooley was recalled and did not come in after agreeing to do so. I do not find that there is any evidence that he should have heen recalled earlier and find that Respondent owes him no offer of reinstatement at this point since he refused its offer.

Albertson worked for half a day in December but then got a job where he had been previously employed; he was laid off but did not respond to any offer from Respondent. It is apparent that he had a job at the other company early in December and did not intend to return to Respondent, so Respondent owes him no further offer of reinstatement.

Probationers Carpenter and Thomas were not offered jobs since they were considered indequate, poor employees. There is no testimony to demonstrate that their union membership or activitv had anything to do with Respondent's not offering to reinstate them. It would be a futile gesture to say Respondent must make them an offer but would then be free to terminate them as inadequate employees. Accordingly I find that Respondent, under these circumstances, is not obligated to offer them reinstatement.

Accordingly, I dismiss complaint paragraph 39.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above in section II which have been found to constitute unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, occurring in connection with Respondent's operations as set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I recommend that it be ordered to cease and desist therefrom and, upon request, bargain collectively in good faith with the Union as the exclusive representative of all employees in the unit set forth below in the Conclusions of Law and in the event that an understanding is reached, embody such understanding in a signed agreement. Respondent shall be ordered to comply with the Union's request for information concerning the employees in the unit.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

> All production and maintenance employees at Respondent's Bryan, Ohio place of business, but excluding plant clerical employees, office clerical employees, road service employees, truck drivers, and guards and supervisors as defined in the Act.

4. The Union is the exclusive representative of the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By withdrawing recognition from the Union and by refusing to meet and bargain with the Union on and after December 10, 1976, and by refusing to provide the Union with requested information regarding unit employees, their names, addresses, jobs, rates of pay, etc., Respondent violated Section 8(a)(5) of the Act.

6. By the foregoing conduct Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

7. Respondent further violated Section 8(a)(1) of the Act by:

(a) Telling employees that after withdrawing from the Union, they should form their own union.

(b) Telling employees that their union was no good and costs them money and they should resign from it and form their own union.

(c) Urging employees not to engage in a strike and not to support their Union.

8. The aforementioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[3]

The Respondent, Mobile Home Estates, Inc., Bryan, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize, meet, and bargain with International Union, Allied Industrial Workers, AFL-CIO, and its Local 712, as the exclusive representative of its employees in the following unit:

> All production and maintenance employees at Respondent's Bryan, Ohio place of business, but excluding plant clerical employees, office clerical employees, road service employees, truck drivers, and guards and supervisors as defined in the Act.

(b) Refusing to provide the Union with requested information concerning unit employees.

(c) Telling employees that, after withdrawing from the Union, they should form their own union.

(d) Telling employees that their union is no good and costs them money and they should resign from it and form their own union.

(e) Urging employees not to engage in a strike and not to support their Union.

(f) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Upon request, bargain collectivelv with said Union as the exclusive representative of its employees in that bargaining unit and, in the event that an understanding is reached, embody such understanding in a signed agreement.

(b) Provide the Union with the information it requested in its December 10, 1976, letter and with any similar information it may request.

(c) Post at its Bryan, Ohio, plant copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[3] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."